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QUEENSLAND

HIRE PURCHASE ACT OF 1959 8 Eliz. 2 No. 33

[Reprinted as at 1 April, 1981]

An Act Relating to the Form and Content of Hire-purchase Agreements, to Regulate the Rights and Duties of Parties to such Agreements, and for other purposes

[Assented to 10 November, 1959]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. (1) **Short title.** This Act may be cited as "*The Hire-purchase Act of 1959.*"

(2) **Commencement.** This Act shall come into operation on a date to be fixed by the Governor in Council by Proclamation published in the *Gazette*.

(3) **Parts of Act.** This Act is divided into Parts as follows:—

PART I—PRELIMINARY (ss. 1–2);

PART II—FORMATION AND CONTENTS OF HIRE-PURCHASE AGREEMENTS (ss. 3–4);

PART III—PROTECTION OF HIRERS (ss. 5–17);

Division I—Warranties and Conditions (ss. 5–6);

Division II—Statutory Rights of Hirers (ss. 7–10);

Division III—Early Completion of Agreements (s. 11);

Division IV—Voluntary Return of Goods (s. 12);

Division V—Repossessions (ss. 13–17);

PART IV—GUARANTEES (ss. 18–19);

PART V—INSURANCE (ss. 20–23);

PART VI—MINIMUM DEPOSITS (ss. 24–27);

PART VII—MISCELLANEOUS (ss. 28–46).

(4) **Application of Act.** This Act shall apply to all hire-purchase agreements and agreements made in connection with hire-purchase agreements entered into after the commencement of this Act.

(5) **Equitable right in hirer.** Subject to this Act, the provisions of this Act shall notwithstanding any law to the contrary, be read as granting to the hirer a right in equity in or in respect of the goods comprised in the hire-purchase agreement based upon the amounts (including the deposit) paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement.

(6) **Repeals and savings. Fifth Schedule.** The Acts mentioned in the Fifth Schedule (hereinafter referred to as "the repealed Acts") are repealed to the extent in that Schedule indicated: Provided that, but without limiting the operation of "*The Acts Interpretation Acts, 1954 to 1957*," and notwithstanding the repeal of the repealed Acts, the provisions of the repealed Acts shall continue to have operation and effect in relation to hire-purchase agreements and agreements made in connection with hire-purchase agreements entered into before the commencement of this Act as if the repealed Acts had not been so repealed.

Commenced 1 January 1960 (Proc. publ. Gaz. 14 November 1959, p. 1805).

2. Interpretation. (1) In this Act unless the context otherwise indicates or requires, the following terms shall have the meanings respectively assigned to them, that is to say—

"Court"—A court of petty sessions constituted by a stipendiary magistrate or acting stipendiary magistrate sitting alone or, when a stipendiary magistrate or acting stipendiary magistrate is not present to constitute the court, any two justices of the peace;

"Dealer"—A person, not being the hirer or the owner or a servant of the owner, by whom or on whose behalf negotiations leading to the making of a hire-purchase agreement with the owner were carried out or by whom or on whose behalf the transaction leading to a hire-purchase agreement with the owner was arranged;

"Goods"—Includes all chattels personal other than money or things in action;

"Guarantor"—A person who has guaranteed the performance by a hirer of all or any of his obligations under a hire-purchase agreement but does not include the dealer or a person engaged, at the time of the giving of the guarantee, in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement;

"Hire-purchase agreement"—Includes a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether such agreement describes such instalments as rent or hire or otherwise) but does not include any agreement—

(a) Whereby the property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods; or

(b) Under which the person by whom the goods are being hired or purchased is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement;

"Hirer"—The person to whom goods are let, hired, or agreed to be sold under a hire-purchase agreement and includes a person to whom the hirer's rights or liabilities under the agreement have passed by assignment or by operation of law;

“Owner”—The person letting, hiring, or agreeing to sell goods under a hire-purchase agreement and includes a person to whom the owner’s property in the goods or any of the owner’s rights or liabilities under the agreement have passed by assignment or operation of law;

“Period of the agreement”—The period between the commencement of the hiring and the time provided by the agreement for the payment of the last instalment;

“Schedule”—Schedule to this Act;

“Statutory rebate”—

(a) In relation to terms charges—

(i) Means the amount derived by multiplying the terms charges by the sum of all the whole numbers from one to the number which is the number of complete months in the period of the agreement still to go (both inclusive) and by dividing the product so obtained by the sum of all the whole numbers from one to the number which is the total number of complete months in the period of the agreement (both inclusive); or

(ii) Where it is agreed in a hire-purchase agreement that the terms charges have been calculated on a simple interest basis at a rate specified in the agreement on the amount (not including the terms charges) outstanding from month to month means the amount of interest attributable to the period of complete months still to go under the agreement;

(b) In relation to insurance, means the sum of—

(i) The total amount of premium paid in respect of any annual period not yet commenced; and

(ii) Ninety per centum of the proportion of the amount of the premium for insurance in respect of the current annual period attributable to the unexpired portion of that period consisting of whole months; and

(c) In relation to maintenance, means the amount derived by multiplying the amount charged for maintenance by the number of complete months in the period of the agreement still to go and dividing the product so obtained by the number of complete months in the period of the agreement;

“Third party insurance”—Any insurance in relation to liability in respect of death or bodily injury caused by or arising out of the use of a motor vehicle being insurance required by the law of the place where the vehicle is registered or is being registered, as the case requires;

“Total amount payable”—The total amount to be paid or provided whether by way of cash or other consideration by or on behalf of the hirer under a hire-purchase agreement;

“Vehicle registration fees”—Any amount to be provided under a hire-purchase agreement by the owner for payment by or on behalf of the hirer under the law of a State or Territory of the Commonwealth in connection with the registration and use of a motor vehicle, including any amount payable for third party insurance.

(2) Any reference in this Act to taking possession by the owner of goods comprised in a hire-purchase agreement does not include a reference to taking possession by the owner as a result of the voluntary return of such goods by the hirer, but does include a taking of possession by the owner of such goods pursuant to an order of any court and a return of goods after a notice has been served on the hirer pursuant to the provisions of subsection one of section thirteen of this Act.

(3) Where, by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods or the property in the goods will or may pass to the bailee, the agreements shall, for the purposes of this Act, be treated as a single hire-purchase agreement made at the time when the last agreement was made.

Court of petty sessions—now Magistrates Court. See Justices Acts Amendment Act of 1964, s. 2 (4).

PART II—FORMATION AND CONTENTS OF HIRE-PURCHASE AGREEMENTS

3. (1) Summary of proposed hire-purchase transaction to be given to prospective hirer. Before any hire-purchase agreement is entered into in respect of any goods the owner or, if there is a dealer, the dealer shall give or cause to be given to the prospective hirer a written statement duly completed in accordance with the form in the First Schedule:

Provided that where the agreement is entered into by way of acceptance by the owner of a written offer signed by or on behalf of the hirer, the provisions of this subsection shall be deemed not to have been complied with unless the written statement was given to the prospective hirer before the written offer was so signed.

(2) Form and contents of hire-purchase agreements. Every hire-purchase agreement—

- (a) Shall be in writing;
- (b) Shall be signed by or on behalf of the hirer and all other parties to the agreement;
- (c) Shall—
 - (i) Specify a date on which the hiring shall be deemed to have commenced;
 - (ii) Specify the number of instalments to be paid under the agreement by the hirer;
 - (iii) Specify the amount of each of those instalments and the person to whom and the place at which the payments of those instalments are to be made;

- (iv) Specify the time for the payment of each of those instalments; and
 - (v) Contain a description of the goods sufficient to identify them;
- (d) Where any part of the consideration is or is to be otherwise than in cash, shall contain a description of that part of the consideration; and
- (e) Shall set out in a tabular form—
- (i) The price at which at the time of signing the agreement the hirer might have purchased the goods for cash (in this Act called and in the agreement to be described as “cash price”);
 - (ii) The amount paid or provided by way of deposit (in this Act called and in the agreement to be described as “deposit”) showing separately the amount paid in money and the amount provided by a consideration other than money;
 - (iii) Any amount included in the total amount payable for maintenance of the goods (in this Act called and in the agreement to be described as “maintenance”);
 - (iv) Any amount included in the total amount payable to cover the expenses of delivering the goods or any of them to or to the order of the hirer (in the agreement to be described as “freight”);
 - (v) Any amount included in the total amount payable to cover vehicle registration fees (in the agreement to be called “vehicle registration fees”);
 - (vi) Any amount included in the total amount payable for insurance other than third party insurance (in this Act called and in the agreement to be described as “insurance”);
 - (vii) The total of the amounts referred to in subparagraphs (i), (iii), (iv), (v), and (vi) of this paragraph less the deposit;
 - (viii) The amount of any other charges included in the total amount payable (in this Act called and in the agreement to be described as “terms charges”);
 - (ix) The total of the amounts referred to in subparagraphs (vii) and (viii) of this paragraph (in this Act called “the balance originally payable under the agreement”); and
 - (x) The total amount payable.
- (3) Every hire-purchase agreement shall provide—
- (a) That the instalments necessary under the agreement to pay the difference between the total amount payable and the deposit shall be of equal or approximately equal amounts and be payable at equal intervals of time; or

- (b) That the terms charges be calculated on a simple interest basis at a rate specified in the agreement on the amount (not including the terms charges) outstanding from month to month.

For the purposes of this subsection—

- (i) An instalment which differs from any other instalment by a sum in excess of two dollars shall be taken to be not an approximately equal instalment;
- (ii) “At equal intervals of time” means at intervals of time which are equal in terms of measurement by a number of days, weeks, months, years or parts of a year.

(4) An owner who enters into a hire-purchase agreement that does not comply with subsections two and three of this section shall be guilty of an offence against this Act.

(5) Without affecting the liability of any person to be convicted of an offence against this section, where a provision of this section has not been complied with in relation to a hire-purchase agreement (not being a failure to comply with paragraph (a) of subsection two of this section), the liability of the hirer shall be reduced by the amount included in the hire-purchase agreement for terms charges. Such amount may be set off by the hirer against any amount that would otherwise be due or which becomes due to the owner under the agreement and, to the extent to which the reduction in the liability of the hirer is not satisfied by such set off, recovered by him from the owner by action as for a debt.

(6) A hire-purchase agreement that is not in writing shall not be enforceable by the owner and all right, title and interest of the owner to or in the goods comprised in the hire-purchase agreement and any right of action in the owner under the hire-purchase agreement shall absolutely cease and determine.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

4. Certain copy documents to be served on hirer. The owner shall serve or cause to be served on the hirer within twenty-one days after the making of a hire-purchase agreement—

- (a) A copy in writing of the agreement;
- (b) A notice in writing in or to the effect of the Second Schedule, which notice may be endorsed on the copy of the agreement; and
- (c) Where any part of the total amount payable consists of an amount paid or to be paid under a policy of insurance (not being a policy of third party insurance), a copy of the policy or a statement in writing of the terms, conditions, and exclusions of the policy which affect or concern the rights of the hirer,

but failure to comply with the provisions of this section shall not avoid the agreement.

PART III—PROTECTION OF HIRERS

Division I—Warranties and conditions

5. Conditions and warranties to be implied in every hire-purchase agreement. (1) In every hire-purchase agreement there shall be—

- (a) An implied warranty that the hirer shall have and enjoy quiet possession of the goods;
- (b) An implied condition on the part of the owner that he will have a right to sell the goods at the time when the property is to pass;
- (c) An implied warranty that the goods will be free from any charge or encumbrance in favour of any third party (other than a charge or encumbrance created by or with the consent of the hirer) at the time when the property is to pass.

(2) In every hire-purchase agreement there shall be an implied condition that the goods shall be of merchantable quality but no such condition shall be implied—

- (a) Where the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed; or
- (b) If the goods are second-hand goods and the agreement contains a statement to the effect that—
 - (i) The goods are second-hand; and
 - (ii) All conditions and warranties as to quality are expressly negatived,and the owner proves that the hirer has acknowledged in writing that that statement was brought to his notice.

(3) Where the hirer expressly or by implication makes known to the owner or to the dealer or to any servant or agent of the owner or the dealer the particular purpose for which the goods are required, there shall be implied in the hire-purchase agreement a condition that the goods shall be reasonably fit for that purpose but no such condition shall be implied if the goods are second-hand goods and the agreement contains a statement to the effect—

- (a) That the goods are second-hand; and
- (b) That all conditions and warranties of fitness and suitability are expressly negatived,

and the owner proves that the hirer has acknowledged in writing that that statement was brought to his notice.

(4) Without prejudice to any other rights or remedies to which an owner may be entitled where the hirer has made known expressly or by implication to the dealer or to any servant or agent of the dealer the particular purpose for which the goods are required, an owner shall be entitled to be indemnified by the dealer against any damage suffered by the owner through the operation of the provisions of the last preceding subsection.

(5) Nothing in this section shall prejudice in any way any other enactment or rule of law whereby any condition or warranty is to be implied in any hire-purchase agreement.

6. As to the liability of the owner and the dealer for misrepresentation.

(1) Every representation, warranty, or statement made to the hirer or prospective hirer, whether orally or in writing, by the owner or dealer or any person acting on behalf of the owner or dealer in connection with or in the course of negotiations leading to the entering into of a hire-purchase agreement shall confer on the hirer—

- (a) As against the owner—the same rights (including the right to rescind the agreement) as the hirer would have had if the representation, warranty, or statement had been made by an agent of the owner; and
- (b) As against the person who made the representation, warranty, or statement, and any person on whose behalf such person was acting in making it—the same right of action as the hirer would have had against them or either of them if the hirer had entered into the hire-purchase agreement with such firstmentioned person or the person on whose behalf he was acting (as the case requires) as a result of the negotiations.

(2) Every covenant, condition, or term in any hire-purchase agreement or other document purporting to exclude, limit, or modify the operation of this section or to preclude any right of action or any defence based on or arising out of any such representation, warranty, or statement shall be void.

(3) Without prejudice to any other rights or remedies to which an owner may be entitled, an owner shall be entitled to be indemnified by the person who made the representation, warranty, or statement, and by any person on whose behalf the representation, warranty, or statement was made against any damage suffered by the owner through the operation of the foregoing provisions of this section.

Division II—Statutory rights of hirers

7. Hirer to be entitled to copy of agreement and statement of his present position. (1) At any time before the final payment has been made under a hire-purchase agreement the owner shall, within fourteen days after he has received a request in writing from the hirer, send to the hirer a copy of the agreement, together with a statement in writing signed by the owner or his agent showing—

- (a) The amount paid to the owner by or on behalf of the hirer;
- (b) The amount which has become due under the agreement but remains unpaid; and
- (c) The amount which is to become payable under the agreement, but an owner shall not be obliged to comply with such a request if he has sent the hirer a copy of the agreement and a statement within the period of three months immediately preceding the receipt of the request.

(2) If an owner fails to comply with subsection one of this section by failing to comply with a request made pursuant to that subsection he shall be guilty of an offence against this Act and liable to a penalty not exceeding one hundred dollars and, until the default is remedied—

- (a) The owner shall not be entitled to enforce—
 - (i) The agreement against the hirer;
 - (ii) Any right to recover the goods from the hirer; or
 - (iii) Any contract of guarantee relating to the agreement; and
- (b) Any security given by the hirer in respect of money payable under the agreement or given by a guarantor shall not be enforceable against the hirer or the guarantor by any holder thereof.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

8. As to appropriation of payments when more than one agreement.

A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to require the owner to appropriate the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and, if he fails to make any such appropriation as aforesaid, the payment shall by virtue of this section be appropriated in or towards the satisfaction of the sums due under the respective agreements in the order in which the agreements were entered into.

9. As to assignments of rights under hire-purchase agreements.

(1) The right, title, and interest of a hirer under a hire-purchase agreement may be assigned with the consent of the owner or, if this consent is unreasonably withheld, without his consent.

(2) Except as otherwise provided in this section, no payment or other consideration shall be required by an owner for his consent to such an assignment as is mentioned in the last preceding subsection, and where an owner requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld.

(3) Where, on a request for his consent thereto being made by a hirer, the owner fails or refuses to give his consent to such an assignment as is mentioned in subsection one of this section, the hirer may apply to the court for an order declaring that the consent of the owner to that assignment has unreasonably been withheld, and where such an order is made that consent shall be deemed to be unreasonably withheld.

(4) As a condition of granting such consent the owner may stipulate that all defaults under the hire-purchase agreement shall be made good and, in any case, may require the hirer and assignee—

- (a) To execute and deliver to the owner an assignment agreement in a form approved by the owner whereby without prejudicing or affecting the continuing personal liability of the hirer in such respects the assignee agrees with the owner to be personally liable to pay the instalments of hire remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the assignee indemnifies the hirer in respect of such liabilities; and
- (b) To pay the reasonable costs (if any) incurred by the owner in stamping or registering the assignment agreement or counterparts.

(5) The right, title, and interest of a hirer under a hire-purchase agreement shall be capable of passing by operation of law to the personal representative of the hirer and if the hirer is a company the liquidator may exercise the same rights under the agreement as the company, but nothing in this subsection shall relieve any such personal representative or liquidator from compliance with the provisions of the agreement.

10. Power to court to allow goods to be removed. Where, by virtue of a hire-purchase agreement, it is the duty of a hirer to keep the goods comprised in the agreement in his possession or control at a particular place or not to remove the goods from a particular place, the court may, on the application of the hirer, make an order approving the removal of the goods to some other place, which place shall thereafter, for the purposes of the agreement, be substituted for the firstmentioned place.

Division III—Early completion of agreement

11. Hirer to be entitled to finalise agreement at any time. (1) The hirer under a hire-purchase agreement may, if he has given notice in writing to the owner of his intention so to do, on or before the day specified for that purpose in the notice, complete the purchase of the goods by paying or tendering to the owner the net balance due to the owner under the agreement.

(2) For the purposes of this section the net balance due shall be the balance originally payable under the agreement less any amounts (other than the deposit) paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, and less—

- (a) The statutory rebate for terms charges;
- (b) If the hirer requires any contract for insurance to be cancelled, the statutory rebate for insurance; and
- (c) If the hirer requires any contract for maintenance to be cancelled, the statutory rebate for maintenance.

(3) The rights conferred on the hirer by this section may be exercised by him—

- (a) At any time during the continuance of the agreement; or
- (b) Where the owner has taken possession of the goods, on paying or tendering to the owner (before or within twenty-one days after the owner has served a notice in the form of the Fourth Schedule on the hirer) in addition to the net balance due—
 - (i) The reasonable costs incurred by the owner of and incidental to his taking possession of the goods; and
 - (ii) Any amount properly expended by the owner on the storage, repair, or maintenance of the goods.

Division IV—Voluntary return of goods

12. Power to hirer to determine hiring. (1) The hirer of any goods comprised in a hire-purchase agreement may terminate the hiring by returning the goods to the owner during ordinary business hours at a place at which the owner ordinarily carries on business or to the place specified for that purpose in the agreement and such a return of the goods shall terminate the hiring.

(2) Where the nature of the goods comprised in a hire-purchase agreement is, or the facilities available at the place or places of business of the owner or at the place specified in the agreement are, such that it would be impracticable to return the goods to any such place, the hirer may terminate the hiring by returning the goods—

- (a) To any place agreed to by the parties to the agreement; or
- (b) If the parties fail to agree, to a place that is reasonable, having regard to all the circumstances surrounding the transaction.

(3) A hirer who proposes to return goods to the owner under this section may apply to the court for an order fixing the place to which the goods may be returned under paragraph (b) of the last preceding subsection.

(4) The court may in any order made pursuant to this section order that, subject to the goods being returned to the owner, the hiring shall be determined on such date as is specified in the order not being a date before the hirer required the owner to nominate a reasonable place for the return of the goods.

(5) Notice of any application under this section shall be given to the owner by the hirer.

(6) Where a hire-purchase agreement is determined pursuant to this section the owner shall be entitled to recover from the hirer—

- (a) The amount (if any) required to be paid in such circumstances under the agreement; or
- (b) The amount (if any) which the owner would have been entitled to recover if he had taken possession of the goods at the date of termination of the hiring,

whichever is the less.

*Division V—Repossessions***13. Notices to be given to hirer when goods are re-possessed. (1)**

An owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments until he has served on the hirer a notice, in writing, in the form of the Third Schedule and the period fixed by the notice (being not less than seven days after the service of the notice) has expired.

(2) An owner shall not be required to comply with subsection one of this section if there are reasonable grounds for believing that the goods comprised in the hire-purchase agreement will be removed or concealed by the hirer contrary to the provisions of the agreement, but the onus of proving the existence of such grounds shall lie upon the owner.

(3) Within thirty days of the owner having taken possession of goods which were comprised in a hire-purchase agreement he shall serve on the hirer and every guarantor of the hirer a notice, in writing, in the form of the Fourth Schedule.

(4) If the notice required by subsection three of this section is not served, the rights of the owner under the hire-purchase agreement shall thereupon cease and determine, but, if the hirer exercises his rights under this Act to recover the goods so taken possession of, the agreement shall have the same force and effect in relation to the rights and liabilities of the owner and the hirer as it would have had if the notices had been duly given.

14. Owner to retain possession of goods re-possessed for twenty-one days. Where an owner has taken possession of any goods he shall not, without the consent in writing of the hirer, sell or dispose of the goods or part with possession thereof until after the expiration of twenty-one days from the date of the service on the hirer of a notice in the form of the Fourth Schedule or, if notice under subparagraph (i) of paragraph (a) of subsection one of section fifteen of this Act has been given, until the time for payment or tender pursuant to that notice has expired (whichever is the later).

15. As to hirer's rights and immunities when goods re-possessed.

(1) If the owner takes possession of any goods comprised in a hire-purchase agreement—

(a) The hirer may, before or within twenty-one days of the service on him of a notice in the form of the Fourth Schedule, by giving to the owner a notice in writing signed by the hirer or his agent—

(i) Require the owner to re-deliver to or to the order of the hirer (subject to compliance by the hirer with the provisions of section sixteen of this Act) the goods which have been re-possessed; or

- (ii) Require the owner to sell the goods to any person introduced by the hirer who is prepared to purchase the goods for cash at a price not less than the estimated value of the goods set out in the notice in the form of the Fourth Schedule served upon the hirer;
- (b) The hirer may recover from the owner—
 - (i) If the value of the goods at the time of the owner so taking possession thereof is less than the net amount payable but the total of that value and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement exceeds the net amount payable—the difference between that total and the net amount payable; or
 - (ii) If the value of the goods at the time of the owner so taking possession thereof is equal to or greater than the net amount payable—the total of that value and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, less the net amount payable;
- (c) The owner shall not be entitled to recover any sum (whether under a judgment or order or otherwise) which would together with—
 - (i) The value of the goods at the time of the owner so taking possession thereof; and
 - (ii) The amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement,
amount to more than the net amount payable in respect of the goods.
- (2) For the purposes of this section—
 - (a) The net amount payable shall be the total amount payable less the statutory rebates for terms charges, insurance, and maintenance; and
 - (b) The value of any goods at the time of the owner taking possession thereof shall be—
 - (i) The best price which could be reasonably obtained by the owner at that time; or
 - (ii) If the hirer has introduced a person who has purchased the goods for cash, the amount paid by such person,
less—
 - (iii) The reasonable costs incurred by the owner of and incidental to his taking possession of the goods;
 - (iv) Any amount properly expended by the owner on the storage, repair, or maintenance of the goods; and
 - (v) (Whether or not the goods have subsequently been sold or disposed of by the owner) the reasonable expenses of selling or otherwise disposing of the goods.

(3) Where the owner has sold goods of which he has taken possession, the onus of proving that the price obtained by him for the goods was the best price which could be reasonably obtained by him at the time when he took possession of the goods shall be on the owner.

(4) Except in a case where the owner has failed to give to the hirer a notice as required by subsection three of section thirteen of this Act, no amount shall be recoverable by the hirer under this section unless—

- (a) The hirer, within twenty-one days after the owner has given such a notice, gives to the owner notice in writing—
 - (i) Setting out the amount claimed under the provisions of this section and the amount which is claimed by the hirer to be the value of such goods at the time of the owner taking possession thereof; and
 - (ii) Signed by the hirer or his solicitor or agent; and
- (b) Proceedings for the recovery of the amount so claimed under the provisions of this section are commenced not earlier than seven days and, except where the goods have been sold at the request of the hirer to a person introduced by the hirer, not later than three months after the giving by the hirer to the owner of the notice referred to in paragraph (a) of this subsection.

(5) If, before any such proceedings are commenced by the hirer, the owner serves an offer in writing on the hirer to pay any amount in satisfaction of the claim by the hirer under this section, the owner in any such proceedings shall be entitled to pay into court the amount so offered and, upon so doing, shall be entitled to the same rights as if that amount had been tendered to the hirer before the proceedings were commenced:

Provided that no such right shall be available to the owner in any proceedings by the hirer to recover the amount so offered or any lesser amount if the hirer, before commencing the proceedings, notifies the owner in writing of the acceptance by the hirer of the amount so offered.

16. Power to hirer to regain possession of goods in certain circumstances. If, within fourteen days after giving notice as aforesaid pursuant to the provisions of subparagraph (i) of paragraph (a) of subsection one of the last preceding section, the hirer—

- (a) Pays or tenders to the owner any amount due by the hirer under the hire-purchase agreement in respect of the period of hiring up to the date of such payment or tender (and for the purposes of this paragraph the hiring shall be deemed to have continued up to such date);
- (b) Remedies any breach of the agreement or (where he is unable to remedy the breach by reason of the fact that the owner has taken possession of the goods) pays or tenders to the owner the costs and expenses reasonably and actually incurred by the owner in doing any act, matter, or thing necessary to remedy that breach; and

- (c) Pays or tenders to the owner the reasonable costs and expenses of the owner of and incidental to his taking possession of the goods and of his returning them to or to the order of the hirer,

the owner shall forthwith return the goods to the hirer and the goods shall be received and held by the hirer pursuant to the terms of the hire-purchase agreement as if the breach had not occurred and the owner had not taken possession thereof: Provided that where the goods are returned to the hirer as aforesaid and any breach has not been remedied, the owner shall not have any right arising out of that breach to take possession of such goods unless—

- (a) By notice in writing given to the hirer at the time of return as aforesaid he specifies the breach and requires it to be remedied; and
- (b) The hirer fails within fourteen days or within the time specified in the notice (whichever is the longer) after receiving such notice to remedy the breach.

17. Power to court to vary existing judgments or orders when goods are re-possessed. In any legal proceedings in relation to a hire-purchase agreement, after the owner has taken possession of the goods, the court before which such proceedings are brought may vary or discharge any judgment or order of any court (whether a court of petty sessions or not) against the hirer for the recovery of money so far as is necessary to give effect to the provisions of section fifteen of this Act.

Court of petty sessions—Now Magistrates Court. See Justices Acts Amendment Act of 1964, s. 2 (4).

PART IV—GUARANTEES

18. Provisions as to guarantors. (1) Save as provided in this Act a guarantor shall not by reason of the operation of this Act be discharged from liability under his guarantee.

(2) The liability of a guarantor shall continue notwithstanding that the owner has, pursuant to the provisions of a hire-purchase agreement, taken possession of the goods comprised therein (and whether or not the goods have been re-delivered to or to the order of the hirer pursuant to this Act); but nothing in this subsection shall operate to preserve the liability of a guarantor where the owner and the hirer have entered into a new agreement in respect of the goods comprised in any hire-purchase agreement.

(3) No guarantor shall be liable to any further or other extent than the hirer, the performance of whose obligations he has guaranteed; but, subject to section nineteen of this Act, nothing in this Act shall affect any agreement by the guarantor binding him to the performance of any obligation which is not one of the obligations imposed on the hirer under the hire-purchase agreement in respect of which the guarantee is given.

(4) Where goods have been delivered to or to the order of the hirer pursuant to a hire-purchase agreement and the owner subsequently takes possession thereof, any guarantor who has paid any moneys to the owner in accordance with his guarantee shall have the like right in like manner to recover such moneys as he would have had if he had been the hirer of the goods, but for the purpose of calculating the amount received by the owner all moneys paid and the value of any other consideration provided by or on behalf of the hirer under the agreement shall be deemed to have been paid or provided by the guarantor: Provided that no moneys shall be recovered by the guarantor in excess of the moneys actually paid by him.

19. Guarantor not to be bound in certain cases unless independently advised. (1) Where a guarantor enters into an agreement binding the guarantor—

- (a) To pay to the owner under a hire-purchase agreement an aggregate sum which is larger than the balance originally payable under the agreement;
- (b) To perform an obligation in respect of goods other than the goods comprised in a hire-purchase agreement;
- (c) To permit the owner under a hire-purchase agreement or any person acting on behalf of the owner to enter upon any premises for the purpose of taking possession of or inspecting goods subject to the agreement; or
- (d) To relieve the owner under a hire-purchase agreement or any person acting on behalf of the owner from liability for any such entry,

the agreement so entered into by the guarantor shall be void (and the owner under the hire-purchase agreement shall be guilty of an offence against this Act) unless the agreement is executed by the guarantor in the presence of the clerk of a court or a solicitor instructed and employed independently of the owner and the clerk or the solicitor, as the case may be, certifies in writing upon the agreement—

- (e) That he is satisfied that the guarantor understands the true purport and effect of the agreement; and
- (f) That the guarantor has executed the agreement in his presence.

(2) A clerk or a solicitor shall not give a certificate in respect of an agreement under the last preceding subsection unless—

- (a) He has read over and explained the agreement to the guarantor or has caused the agreement to be read over and explained to the guarantor in his presence;
- (b) He has examined the guarantor touching his knowledge of the agreement;
- (c) He is satisfied that the guarantor understands the true purport and effect of the agreement; and
- (d) The guarantor has freely and voluntarily executed the agreement in his presence.

(3) Failure by a clerk or by a solicitor to comply with the last preceding subsection in respect of a certificate shall not invalidate the certificate.

PART V—INSURANCE

20. As to insurance of goods comprised in hire-purchase agreements. (1) An owner may require any goods comprised in a hire-purchase agreement to be insured in the names of the owner and the hirer against any risk that he thinks fit for the period of the agreement at the expense of the hirer.

(2) An owner shall not require a hirer to insure any such risk with any particular insurer.

(3) An owner shall not refuse to enter into a hire-purchase agreement with a person who effects insurance of the goods for the period of the agreement against such risks and subject to such terms, conditions, and exceptions as are required by the owner in the names of the owner and the hirer with a reputable insurer if the owner has no grounds other than the effecting of such insurance upon which the owner could reasonably refuse to enter into the agreement.

(4) An owner shall not require a hirer to obtain insurance against risks or subject to terms, conditions, and exceptions which the owner does not require if he arranges the insurance.

(5) **Hirer to be entitled to insurance rebates.** Where, in respect of the insurance of goods comprised in a hire-purchase agreement, the insurer allows a no-claim rebate or a rebate of a similar nature, the hirer under the agreement shall be entitled to the benefit of the rebate and any person who knowingly pays or allows any such rebate to an owner shall be guilty of an offence against this Act.

21. Powers of court in relation to insurance contracts associated with hire-purchase agreements. (1) In any proceedings taken in any court in respect of any difference or dispute arising out of a contract of insurance if it appears to the court that a failure by the insured or the hirer to observe or perform a term or condition of the contract of insurance may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may, unless an order excusing the failure has already been made under subsection two of this section, order that the failure be excused.

(2) Where a difference or dispute has arisen out of a contract of insurance, the insured or the hirer or any guarantor in respect of the hire-purchase agreement (to which the contract of insurance relates) may, unless an order excusing the failure concerned has already been made under subsection one of this section, apply to the court for an order that the failure to observe a term or condition of the contract of insurance be excused; and if it appears to the court that the failure may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may order that the failure be excused.

(3) Where an order of the nature referred to in subsections one and two of this section has been made under either of those subsections, the rights and liabilities of all persons in respect of the contract of insurance concerned shall be determined as if the failure the subject of the order had not occurred.

22. As to contents of contracts of insurance. (1) Every contract of insurance (not being a contract of third-party insurance) and statement served upon a hirer pursuant to section four of this Act shall—

- (a) Identify the goods or the part of the goods to be insured; and
- (b) Contain a statement of the amount and period for which the goods are insured or are to be insured; and
- (c) If the amount for which the goods are or are to be insured will vary during the period of the agreement, contain a statement showing the varying amounts.

(2) Subject to subsection three of this section, any provision in any agreement or other document—

- (a) Requiring differences or disputes arising out of a contract of insurance to be referred to arbitration;
- (b) Providing that no action or suit shall be maintainable upon such a contract or against the insurer in respect of any claim under, or difference or dispute arising out of, such a contract unless the claim, difference, or dispute has been referred to arbitration or an award pursuant to arbitration proceedings has been first obtained;
- (c) Providing that arbitration or an award pursuant to arbitration proceedings is a condition precedent to any right of action or suit upon such a contract; or
- (d) Otherwise imposing by reference to arbitration or to an award made in arbitration proceedings any limitation on the right of any person to bring or maintain any action or suit upon such a contract,

shall not bind the hirer.

(3) An agreement made by the parties to a contract of insurance after a difference or dispute has arisen out of the contract of insurance to submit that difference or dispute to arbitration shall have effect as if the last preceding subsection had not been enacted.

23. Application of Part V. (1) The provisions of the last two preceding sections shall apply only to or in respect of a contract of insurance of goods (whether or not the contract includes any other class of insurance) where the contract of insurance was insurance required by the terms of the hire-purchase agreement in respect of the goods comprised therein.

(2) The provisions of this Part of this Act shall have effect notwithstanding anything contained in any other Act.

PART VI—MINIMUM DEPOSITS

24. Meaning of terms. For the purposes of this Part of this Act—

“Banker” means—

- (a) The Corporation of the Agricultural Bank as constituted under “*The Co-ordination of Rural Advances and Agricultural Bank Acts, 1938 to 1951*”; or
- (b) A body corporate authorised under Part II of the *Banking Act 1959* of the Commonwealth to carry on banking business in Australia; or
- (c) A body corporate authorised to carry on banking business under the “*Commonwealth Banks Act 1959*” of the Commonwealth;

“Cash” includes a cheque drawn by or on a banker; and

“Loan” includes advance, discount, money paid for or on account of or on behalf of or at the request of any person, and includes every contract (whatever its terms or form may be) which is in substance or effect a loan of money, and “lend” and “lending” have corresponding interpretations.

25. Minimum deposits. (1) An owner who enters into a hire-purchase agreement without having first obtained from the proposed hirer thereunder a deposit in cash or in goods, or partly in cash and partly in goods, to a value equal to at least one-tenth of the cash price of the goods comprised in the agreement shall be guilty of an offence against this Act:

Provided that any person proceeded against for an offence against this section shall not be convicted if he satisfies the court that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to all the circumstances.

(2) Without affecting the liability of any person to be convicted of an offence against this section, where the provisions of subsection one of this section have not been complied with, the liability of the hirer shall be reduced by the amount included in the hire-purchase agreement for term charges. Such amount may be set off by the hirer against any amount that would otherwise be due or which becomes due to the owner under the agreement and, to the extent to which the reduction in the liability of the hirer is not satisfied by such set off, recovered by him from the owner by action as for a debt.

26. (1) Certain payments not to be treated as deposits for the purposes of this Part. No deposit—

- (a) To the extent that it is in cash and that it is made out of moneys borrowed directly or indirectly—
 - (i) From or through the owner (if the owner is not a banker);
 - (ii) From or through the dealer; or

- (iii) From or through any person whose business or part of whose business it is by agreement with the owner or dealer or any person acting on behalf of the owner or dealer to advance money to enable deposits to be paid in respect of hire-purchase agreements with the owner;
- (b) To the extent that, where the deposit is in goods or partly in goods and the amount allowed in respect of the goods is substantially greater than the value of the goods, that amount exceeds that value;
- (c) To the extent that it is made out of an amount allowed or credited in respect of or by reference to amounts paid by the hirer as rent or hire under a bailment of the goods before the making of a hire-purchase agreement in respect of the goods; or
- (d) To the extent that it is provided by goods that were to the knowledge of the owner or dealer acquired by the hirer for the purpose of being used by the hirer to provide the deposit under the agreement,

shall be taken into account for the purpose of determining whether the provisions of section twenty-five of this Act have been complied with.

(2) The provisions of this Part of this Act shall be deemed to have been complied with by the owner if a deposit in accordance with the provisions of this Part of this Act has been obtained by the dealer.

(3) Where the dealer buys goods from a proposed hirer and the price, or part of the price, of the goods is applied as or towards a deposit under a hire-purchase agreement, then in relation to the agreement—

- (a) The goods shall, for the purposes of this Act, be deemed to have been obtained by the dealer as a deposit; and
- (b) The price, or the part of the price, as the case may be, so applied shall, for the purposes of this Act, be deemed to be the amount allowed by the dealer in respect of the goods.

(4) **Offences.** Any person who knowingly enters into or procures, arranges, or otherwise assists or participates in a transaction contravening section twenty-five of this Act or this section shall be guilty of an offence against this Act.

27. (1) Offence to carry on business of lending deposits. Any person, other than a banker, who (whether or not he carries on any other business) carries on the business of lending or making loans to other persons for the purposes of enabling those other persons to pay the deposits required by or under section twenty-five of this Act shall be guilty of an offence against this Act.

(2) **Deposits not to be by way of loan.** Any person who accepts as a deposit under a hire-purchase agreement any money or other consideration that he has reasonable cause to believe or suspect was lent to the hirer by any person, other than a banker, who carries on the business referred to in subsection one of this section shall be guilty of an offence against this Act.

PART VII—MISCELLANEOUS

28. Power to court to re-open certain hire-purchase transactions.

(1) In any proceedings under this Act or arising out of a hire-purchase agreement or instituted pursuant to subsection four of this section where it appears to the court that the transaction is harsh and unconscionable or is otherwise such that the Supreme Court would give relief on an equitable ground the court may re-open the transaction and take an account between the parties thereto.

(2) The court re-opening any transaction under this section may, notwithstanding any statement or settlement of accounts or any agreement purporting to close previous dealings and create a new obligation—

- (a) Re-open any account already taken between the parties;
- (b) Relieve the hirer and any guarantor from payment of any sum in excess of such sum in respect of the cash price, terms charges, and other charges as the court adjudges to be fairly and reasonably payable;
- (c) Set aside either wholly or in part or revise or alter any agreement made or security given in connection with the transaction;
- (d) Give judgment for any party for such amount as, having regard to the relief (if any) which the court thinks fit to grant, is justly due to that party under the agreement; and
- (e) If it thinks fit give judgment against any party for delivery of the goods if they are in his possession.

(3) Where it appears to the court that any person other than the owner has shared in the profits of or has any beneficial interest prospectively or otherwise in the transaction which the court holds to be harsh and unconscionable the court may add that person as a party to the case and may give judgment against that person for such amount as it thinks fit or for the delivery of the goods if they are in his possession and the court may make such other order in respect of that person as it thinks fit.

(4) Proceedings may be instituted in any court (including a court of petty sessions constituted in accordance with the provisions of this Act) by the hirer or any guarantor under a hire-purchase agreement for the purpose of obtaining relief under this section:

Provided that nothing in this subsection shall authorise the bringing of proceedings in a court where the total amount payable under the hire-purchase agreement concerned exceeds the monetary limit to which the jurisdiction of such is subject or, in the case of a court of petty sessions, the monetary limit to which the jurisdiction of a Magistrates Court, constituted under "*The Magistrates Courts Acts, 1921 to 1954*," is subject.

(5) In any proceedings under this section the court shall have and may exercise all or any of the powers conferred by subsections one, two, and three of this section notwithstanding that the time for the payment of any of the amounts payable under the agreement may not have arrived.

(6) A hirer or guarantor under a hire-purchase agreement is not entitled to institute proceedings under this section—

- (a) **Fourth Schedule.** In a case where the owner has taken possession of the goods comprised in the agreement—after the expiration of a period of four months from the time when the owner serves the notice in the form of the Fourth Schedule; or
- (b) In any other case—after the expiration of a period of four months from the time when the transaction is closed.

Court of petty sessions—Now Magistrates Court. See Justices Acts Amendment Act of 1964, s. 2 (4).

29. Maximum rate of terms charges. (1) For the purposes of this section “capital outlay” means the balance originally payable under the agreement less the terms charges and, in relation to capital outlay, “payable by instalments” means payable by instalments—

- (a) In number equal to the number of instalments payable under the hire-purchase agreement;
- (b) Payable respectively at the times specified in the agreement for the payment of instalments; and
- (c) In amounts respectively equal to the instalment under the agreement payable at the relevant time reduced by so much of such instalment as consists of terms charges.

Any provision in any agreement or other document whereby the hirer under a hire-purchase agreement is required to pay a sum (whether or not it is described in the agreement as terms charges) in respect of terms charges exceeding a sum equal to the simple interest on the capital outlay at the maximum rate per centum per annum prescribed for the time being under and for the purposes of section 17F of “*The Money Lenders Acts, 1916 to 1959*,” calculated on the basis that the capital outlay is payable by instalments, for the period of the hire-purchase agreement, shall be void:

Provided that nothing in this section shall be read so as to limit in any respect the powers of a court under section twenty-eight of this Act.

(2) Without affecting the liability of any person to be convicted of an offence against this section, where any agreement or other document contains a provision that is void under the provisions of subsection one of this section, the liability of the hirer under the hire-purchase agreement concerned shall be reduced by the amount included in the hire-purchase agreement or any other agreement or document for terms charges. Such amount may be set off by the hirer against any amount that would otherwise be due or which becomes due to the owner under the hire-purchase agreement and, to the extent to which the reduction in the liability of the hirer is not satisfied by such set off, recovered by him from the owner by action as for a debt.

(3) Where any agreement or other document contains a provision that is void under the provisions of subsection one of this section, the owner under the hire-purchase agreement concerned shall be guilty of an offence.

Penalty: Not exceeding four hundred dollars.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

30. Power to court to restrain re-possession of certain goods from farmer. (1) Where—

- (a) Goods consisting of a harvester, binder, tractor, plough or other agricultural implement or a motor truck are comprised in a hire-purchase agreement; and
- (b) The hirer is a farmer,

the period fixed by any notice of intention to take possession of the goods served under subsection one of section thirteen of this Act shall, notwithstanding the period specified in that subsection, be a period of not less than thirty days after the service of the notice.

(2) The farmer may, within the period fixed by the notice, apply to the court for an order restraining the owner from taking possession of the goods.

(3) If the court is satisfied that, within twelve months from the date of the application, the farmer will have a reasonable prospect of being able to pay all instalments due and owing on that date, the court may make an order restraining the owner from taking possession of the goods for such period not exceeding twelve months as the court fixes.

(4) An order under subsection three of this section may include such terms and conditions, including conditions as to payment of instalments, as the court thinks fit.

(5) In this section, "farmer" means any person engaged in agriculture, pastorage, horticulture, viticulture, apiculture, poultry farming, dairy farming, or any other business consisting of the cultivation of soil, the gathering in of crops or the rearing of livestock.

31. Liens. (1) Subject to subsection two of this section, where a worker does work upon goods comprised in a hire-purchase agreement in such circumstances that, if the goods were the property of the hirer, the worker would be entitled to a lien on the goods for the value of his work, he is entitled to a lien notwithstanding that the goods are not the property of the hirer.

(2) The lien is not enforceable against the owner if the hire-purchase agreement contains a provision prohibiting the creation of a lien by the hirer and the worker had notice of that provision before doing the work upon the goods.

32. Fixtures. (1) Goods comprised in a hire-purchase agreement which, at the time of the making of the agreement, were not fixtures to land shall not in respect of the period during which the agreement remains in force be treated as fixtures to land.

(2) Notwithstanding anything contained in the last preceding subsection, the owner shall not be entitled to re-possess goods which have been affixed to a dwelling-house or residence if, after the goods have become so affixed, any person other than the hirer has bona fide acquired for valuable consideration an interest in the land without notice of the rights of the owner of the goods.

33. Avoidance of certain provisions. (1) Any provision in any agreement or other document whereby—

- (a) Any right conferred on the hirer by this Act to determine a hire-purchase agreement is excluded or restricted;
- (b) Any liability beyond the liability imposed by this Act is imposed on the hirer under a hire-purchase agreement by reason of the determination of the agreement in accordance with this Act;
- (c) The hirer under a hire-purchase agreement is subject to any greater liability on the determination, in any manner whatsoever, of the agreement or of the bailment thereunder, than the liability to which he would be subject if the agreement were determined in accordance with this Act;
- (d) The hirer under a hire-purchase agreement is required to pay any sum (whether or not it is described in the agreement as interest) in respect of any amount due under the agreement but not paid exceeding a sum equal to the simple interest on that amount calculated at the rate of eight per centum per annum on a daily basis for the period for which it is due and not paid;
- (e) Any person acting on behalf of the owner under a hire-purchase agreement in connection with or in the course of the negotiations leading to the entering into the agreement is to be treated as, or declared to be, the agent of the hirer;
- (f) The owner under a hire-purchase agreement is relieved from liability for the acts or defaults of any person acting in connection with or in the course of the negotiations leading to the entering into the agreement;
- (g) The owner under a hire-purchase agreement or any person acting on his behalf is authorised to enter upon the premises for the purpose of taking possession of goods comprised in the agreement or is relieved from liability for any such entry;
- (h) The operation of a hire-purchase agreement is determined or modified or any person is authorised to re-possess any goods comprised in a hire-purchase agreement if the hirer becomes bankrupt or commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement (whether all or any of these events are named); or
- (i) Except as expressly provided by this Act the operation of any provision of this Act is excluded, modified, or restricted,

shall be void:

Provided that, but without affecting the liability of any person to be convicted for an offence against this section, all moneys paid and the value of any other consideration provided by or on behalf of the hirer under a provision in an agreement or other document that is void under the provisions of this subsection shall be recoverable by the hirer from the owner under the hire-purchase agreement concerned by action as for a debt.

(2) Where any agreement or other document contains a provision that is void under the provisions of subsection one of this section, the owner under the hire-purchase agreement concerned shall be guilty of an offence against this Act.

34. Restrictions on payments to owners of goods by financiers.

If in connection with any goods any person (in this section referred to as the "dealer") arranges that some other person (in this section referred to as the "financier") shall—

- (a) Enter into a hire-purchase agreement in relation to those goods with a hirer;
- (b) Accepts any assignment of the dealer's property in the goods comprised in, or of the dealer's rights under, a hire-purchase agreement; or
- (c) Advance or pay money to the dealer or to some person on his behalf in respect of a hire-purchase agreement in relation to such goods,

such dealer shall not seek, accept, demand, or receive from the financier and such financier shall not pay, offer, or grant to the dealer, directly or indirectly, any money or other valuable consideration which, together with the money (if any) paid or payable by or on behalf of the hirer to the dealer and the value of any other consideration (if any) furnished or to be furnished by or on behalf of the hirer to the dealer would exceed the cash price of the goods:

Provided that—

- (i) Where the dealer has entered into a contract guaranteeing the performance of the hire-purchase agreement by the hirer, a commission not exceeding one-tenth of the total terms charges payable under the hire-purchase agreement may be paid by the financier to the dealer; and
- (ii) Where the dealer has agreed with the hirer to maintain or to provide any service for the goods during the currency of the hire-purchase agreement any amount payable under the agreement in respect of the maintenance or service may be paid by the financier to the dealer.

35. Certain transactions prohibited. Any person (in this section referred to as the "owner") who knowingly—

- (a) Enters into an agreement for the bailment of goods to any person (in this section referred to as the "hirer") which agreement does not by itself constitute a hire-purchase agreement; or

- (b) Takes from any person (in this section referred to as the "hirer") an offer in writing that, if accepted, will constitute an agreement for the bailment of goods but will not by itself constitute a hire-purchase agreement,

in association, directly or indirectly, with the making, by the hirer to the owner or to any person associated, directly or indirectly, in business with the owner, of an offer in writing to purchase the goods the subject of the agreement referred to in paragraph (a) or of the offer referred to in paragraph (b), of this section on terms and conditions that, if the offer in writing to purchase the goods is accepted, will constitute a hire-purchase agreement shall be guilty of an offence against this Act.

36. As to securities collateral to hire-purchase agreements. Where—

- (a) A bill of exchange or promissory note has been given by a hirer or guarantor under a hire-purchase agreement to the owner in respect of an amount payable under the agreement; and
- (b) The payment in due course of the bill of exchange or promissory note would, by virtue of the operation of any provision of this Act or otherwise result in payment of an amount in excess of the liability of the hirer under the agreement,

the owner shall be liable to indemnify the hirer or guarantor, as the case may be, in respect of the amount of the excess.

37. False statement by dealers in proposals. Any dealer who prepares or causes to be prepared any hire-purchase agreement or offer in writing which, if accepted, will constitute a hire-purchase agreement with the intention of bringing about a contractual relationship between an owner and a hirer and which agreement or offer contains to the knowledge of the dealer any false statement or representation that is false in any material particular shall be guilty of an offence against this Act and liable to a penalty not exceeding four hundred dollars or to imprisonment for a term not exceeding three months.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

38. Hirer may be required to state where goods are. The owner of any goods comprised in a hire-purchase agreement may at any time by notice in writing served on the hirer thereof require him to state in writing where the goods are, or, if the goods are not in his possession, to whom he delivered the goods or the circumstances under which he lost possession of them and any hirer who does not within fourteen days after the receipt of any such notice give to the owner such a statement or who gives a statement containing any information which is to the knowledge of the hirer false shall be guilty of an offence against this Act.

39. Fraudulent sale or disposal of goods by hirer. Every person who, by the disposal or sale of any goods comprised in a hire-purchase agreement, or by the removal of the goods, or by any other means

defrauds or attempts to defraud the owner, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding four hundred dollars or to imprisonment for a period not exceeding three months.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

40. Power to court to extend times. Any time prescribed by this Act for the service or giving of any notice or other document or for the commencement of proceedings may, on an application made to the court (either before or after the expiration of that time but after notice to the other party to the hire-purchase agreement) be extended by that court for such further period, and upon such conditions, as the court thinks fit.

41. Power to court to order delivery of goods unlawfully detained.

(1) Upon complaint made by an owner who is entitled to take possession of any goods comprised in a hire-purchase agreement or by any person acting on behalf of an owner that the hirer or any person acting on behalf of the hirer has refused or failed to deliver up possession of the goods on the service of a notice of demand made by the owner or by an agent of the owner authorised in that behalf, any justice of the peace may summon the person complained of to appear before a court and if it appears to the court hearing the case that the goods are being detained without just cause, the court may order the goods to be delivered up to the owner at or before a time, and at a place, to be specified in the order.

(2) Any person who neglects or refuses to comply with any order made under this section shall be guilty of an offence against this Act.

42. (1) As to service of notices. Any notice or document required or authorised to be served on or given to an owner or hirer under this Act may be so served or given—

- (a) By delivering it to him personally;
- (b) By leaving it at his place of abode or business with some other person apparently an inmate thereof or employed thereat and apparently of or over the age of sixteen years; or
- (c) By posting it addressed to him at his last known place of abode or business.

(2) **Proof of service.** The affidavit or oral evidence of an owner or his servant or agent as to the delivery or posting of any notice or document required to be served by this Act shall be admissible as *prima facie* evidence of the due service of the document or notice if the deponent swears to the facts necessary to prove due service either from his own knowledge or to his information and belief based on and verified by the records of the owner.

43. Size, &c., of type, &c., required in certain documents. (1) Any part of a prescribed document that is not clear and legible or that is printed in type of a size smaller than the type known as ten-point Times, shall be deemed to be not in writing.

(2) In this section "prescribed document" means—

- (a) Every hire-purchase agreement;
- (b) Any statement under subsection one of section three;
- (c) Any copy of an agreement, notice, or statement required by section four to be served on a hirer;
- (d) Any statement required by subsection one of section seven to be sent to the hirer; and
- (e) Any notice under subsection one or subsection three of section thirteen.

44. (1) Appointment of inspector. The Governor in Council may from time to time, appoint under and for the purposes of this Act, such inspectors as he deems necessary for the effectual administration of this Act.

Appointees as aforesaid shall be appointed and hold their respective offices under, subject to, and in accordance with "*The Public Service Acts, 1922 to 1958.*"

(2) The Minister may from time to time, by notification published in the *Gazette*, appoint such and so many competent persons as he deems necessary to act as inspectors under and for the purposes of this Act, and may in like manner cancel such appointments.

(3) An officer of the Public Service may, in addition to the position which he holds therein, be appointed also an inspector.

An inspector may hold his appointment under this Act in conjunction with any other position in the Public Service.

(4) Any appointment as an inspector may be made by the appointment of the holder for the time being of an office under the Crown in the right of this State, specifying the office but without naming the holder; and in every such case each successive holder of the office in question and each person who for the time being occupies, or performs the duties of, that office shall without further appointment or other authority, and while he holds or occupies or performs the duties of that office, be an inspector in terms of such appointment.

(5) Every inspector shall as far as practicable be furnished with a certificate of appointment signed by the Minister and upon entering any premises shall, if required, produce that certificate to the owner or occupier of the premises.

(6) **General powers of inspectors.** Any inspector may—

- (i) Call to his aid any person he thinks competent to assist him in making any inspection or examination;
- (ii) Make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act have been or are being complied with by any person or in respect of any hire-purchase agreement or any agreement made in connection with any hire-purchase agreement;

- (iii) Question, with respect to matters under this Act, the owner or occupier of any premises, every person whom he finds in any premises, and every person who has been within the preceding six months employed in or on any premises to ascertain whether this Act has been or is being complied with, and require any such person to answer the question put and to sign a declaration as to the truth of his answers;
- (iv) Require the production of any book, account, notice, record, certificate, document or other writing which is in his opinion material to any examination or inquiry under paragraph (ii) of this subsection, and inspect, examine, and take copies of or extracts from the same.

(7) Inspector may require name and address. Any inspector who—

- (a) Finds any person committing or who reasonably suspects any person of having committed an offence against this Act; or
- (b) Is making inquiries or investigations with a view to establishing whether or not an offence against this Act has been committed by any person,

may require such person to state his name and address, or name or address, and, if he has reasonable ground to suppose that the name and address, or name or address, given is false, may require evidence of the correctness thereof.

(8) Records to be kept of hire-purchase agreements. Every owner who enters into a hire-purchase agreement shall keep proper records setting out particulars of the agreement and of the amounts charged and received in respect thereof. All such records shall be preserved by the owner for a period of not less than one year after the completion of the agreement concerned.

(9) Obstructing an inspector, &c. (a) A person shall not—

- (i) Assault, resist or obstruct an inspector in the exercise of his powers or in the discharge of his duties under this Act, or attempt so to do; or
- (ii) Fail to comply with the lawful requisition or any part of the lawful requisition of an inspector; or
- (iii) Fail, without reasonable excuse the proof whereof shall lie upon him, to produce any book, account, notice, record, certificate, document or other writing which he is required under this Act by an inspector to produce, or fail to allow an inspector to take a copy of or extract from any such book, account, notice, record, certificate, document or other writing; or
- (iv) Directly or indirectly prevent any person from appearing before or being questioned by an inspector, or attempting so to do or;

- (v) Use any threat or any abusive or insulting language to any inspector or to any other person with respect to any inspection or examination or questioning.

Penalty: Not exceeding four hundred dollars.

- (b) No person shall be required under this section to answer any question, or give any information or evidence, or to sign any declaration tending to criminate himself.

(10) **Meaning of terms.** In this section and section forty-six of this Act the following terms shall have the meanings respectively assigned to them, that is to say—

“Inspector”—Any inspector appointed under this Act: The term includes any person appointed to act as an inspector, and also any person acting under direction, or in aid, of an inspector;

“Minister”—Minister for Justice and Attorney-General or other Minister of the Crown for the time being charged with the administration of this Act.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

45. (1) Place where proceedings in courts of petty sessions to be heard. Every matter or proceeding (other than proceedings for an offence against this Act) made or taken in a court of petty sessions under this Act shall be heard and determined summarily at a place appointed for holding such courts in the petty sessions district wherein is situated the place whereat the goods comprised in the hire-purchase agreement to which the matter or proceeding relates are by virtue of the agreement required to be kept or, where no such place is so appointed, the place whereat the hirer ordinarily resides:

Provided that the court may, upon the application of any party to the said matter or proceeding at or before the hearing thereof and if satisfied that there is a manifest preponderance of convenience in so doing, direct that the matter or proceeding be heard at any other place appointed for holding courts of petty sessions whether situated within the same petty sessions district or not and thereupon the matter or proceeding may be lawfully heard and determined by a court of petty sessions at such other place:

Provided further that the decision of the court upon any such application shall be final and conclusive.

(2) **Appeal from order of court of petty sessions.** (a) Any person aggrieved by an order made by a court of petty sessions in any matter or proceeding under the Act may appeal from that order under “*The Justices Acts, 1886 to 1958*,” as if the same were a penalty imposed upon conviction for an offence by justices sitting as a court of petty sessions.

(b) The provisions of Part IX of “*The Justices Acts, 1886 to 1958*,” shall, with and subject to all necessary adaptations, apply to appeals under this section.

Court of Petty Sessions now Magistrates Court. See Justices Act Amendment Act of 1964, s. 2 (4).

46. Penalty. (1) Any person who contravenes or fails to comply with any provision of this Act shall for every such contravention or failure be guilty of an offence, and every person guilty of an offence against this Act where no other penalty is expressly provided shall be liable to a penalty of not more than four hundred dollars.

(2) **Summary proceedings.** All offences against this Act may be prosecuted in a summary way under "*The Justices Acts, 1886 to 1958*," upon complaint of any person thereunto authorised by the Minister, either generally or in any special case.

(3) **Time for commencement of prosecutions.** A prosecution for an offence against this Act may be commenced at any time within twelve months after the commission of the offence or within six months after the commission of the offence comes to the knowledge of the complainant, whichever is the later period.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

[s. 3 (1)]

FIRST SCHEDULE

"*The Hire-purchase Act of 1959*"

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

SUMMARY OF YOUR FINANCIAL OBLIGATIONS UNDER PROPOSED
HIRE-PURCHASE AGREEMENT RELATING TO

*

The cash price of goods is	..	..	..	\$
(a) The terms charges are	..	..	..	\$
(a) Other charges are—				
(a) For insurance for	years	..	..	\$
(a) For maintenance	..	..	..	\$
(a) For freight, vehicle registration, &c.				\$
The total amount you will have to pay (including deposit of \$	)	is	..	\$
The difference between the cash price of goods and the total amount you will have to pay is therefore	\$	..	..
Your instalments under the proposed agreement will be	†.			

NOTE.—*The sequence of the items marked "(a)" in this form may be rearranged if desired provided that the sequence of items not so marked is unchanged.*

*Insert short description of goods.

†Insert number, amount, and intervals of instalments.

[s. 4]

SECOND SCHEDULE
 "The Hire-purchase Act of 1959"

ADVICE TO HIRERS

Under the provisions of "The Hire-purchase Act of 1959"—

- (a) You are entitled to a copy of the agreement and a statement of the amount that you owe if you make a written request to the owner for them. You may not request a copy or a statement more than once in three months;
- (b) With the written consent of the owner you can assign your rights under the hire-purchase agreement and he may not unreasonably refuse his consent. For details of the procedure of assignment see "The Hire-purchase Act of 1959," section 9;
- (c) You have the right to complete the agreement at any time and if you do you will be entitled to a rebate of some of the charges payable under the agreement. For details see "The Hire-purchase Act of 1959," section 11;
- (d) If you are unable to pay your instalments you are entitled to return the goods to the owner at your own expense, but if you do you will be liable to pay an amount sufficient to cover the loss suffered by the owner. For details of the amount that you will have to pay see "The Hire-purchase Act of 1959," section 12.

[s. 13 (1)]

THIRD SCHEDULE
 "The Hire-purchase Act of 1959"

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

NOTICE OF INTENTION TO RE-POSSESS

Take Notice that
 the owner of *
 hired by you under an agreement dated the _____ day
 of _____ 19 _____ intends to re-take possession of the goods
 after the expiration of † _____ days from the service of this
 notice unless the arrears of instalments which now amount to
 \$ _____ are paid to _____ at _____ on or
 before _____ 19 _____ .

Total amount payable	_____	\$
Amount paid or provided by hirer to / 19	_____	\$
Arrears under agreement to / 19	_____	\$

*Insert description of goods.

†Insert number of days, not being less than seven, or, where the hirer is a farmer and s. 30 of the Act applies not being less than thirty.

[ss. 11 (3), 13 (3), 14, 15, 28 (6)]

FOURTH SCHEDULE

"The Hire-purchase Act of 1959"

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

ADVICE TO HIRERS

Now that the goods you hired have been re-possessed you will be entitled to get them back—

- (a) If, within twenty-one days, you require the owner, by a notice in writing signed by you or your agent to re-deliver the goods to you and if, within fourteen days after giving the notice, you reinstate the agreement by paying the arrears and remedy the following breaches of the agreement (or pay the owner's expenses in remedying them):

The owner's estimate of the amount you must pay to reinstate the agreement is:—

Arrears of instalments	.. .. .	\$
Cost of storage, repair or maintenance		\$
Cost of re-possession		\$
Cost of re-delivery		\$
Total	.. .. .	\$

or

- (b) If, within twenty-one days, you give notice of your intention to finalise the agreement and pay the balance due under the agreement and costs of the re-possession:

The owner's estimate of the amount required to finalise the agreement is:—

Total amount payable under the agreement		\$
Less deposit and instalments paid		\$
Balance due under agreement		\$
Less statutory rebates		\$
Add cost of re-possession		\$
Storage, repair, or maintenance		\$
Total		\$

If you don't reinstate or finalise the agreement you will be liable for the owner's own loss unless the value of the goods re-possessed is sufficient to cover your liability. If the value of the goods is more than sufficient to cover your liability you will be entitled to a refund.

The owner's estimate of the value of the goods re-possessed is \$

*On the basis of that estimate you are entitled to a refund of \$
liable to pay the owner \$

NOTE.—You may give a written notice to the owner requiring the owner to sell the goods to any cash buyer you can introduce who is willing to pay the owner's estimate of the value, i.e. †.

* Strike out whichever inapplicable.

† Insert owner's estimate of value.

DO NOT DELAY

Action to enforce your rights should be taken at once. You will lose your rights twenty-one days after the service or posting of this notice if you do not take action.

If you think you have rights under "*The Hire-purchase Act of 1959*," you should seek advice at once.

NOTE.—Where this notice is sent to a guarantor it shall be endorsed as follows:—

This notice is sent to you as guarantor of

As guarantor you have certain rights under "*The Hire-purchase Act of 1959*," and you should seek advice at once.

[s. 1 (6)]

FIFTH SCHEDULE

Year and Number of Act	Short Title	Extent of Repeal
24 Geo. 5 No. 9	" <i>The Hire-purchase Agreement Act of 1933</i> "	The whole
25 Geo. 5 No. 33	" <i>The Law of Distress and Other Acts Amendment Act of 1934</i> "	Section 26
4 Geo. 6 No. 7	" <i>The Hire-purchase Agreement Acts Amendment Act of 1940</i> "	The whole
7 Geo. 6 No. 10	" <i>The Hire-purchase Agreement Acts Amendment Act of 1943</i> "	The whole

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