Western Australia

Hire-Purchase Act 1959

Compare between:

[01 Jan 2011, 07-k0-02] and [18 Feb 2011, 08-a0-02]

Western Australia

Reprinted under the *Reprints Act 1984* as at 18 February 2011

Hire-Purchase Act 1959

An Act to consolidate and amend the law relating to hire-purchase.

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Part I — Preliminary

1. Short title and commencement

(1) This Act may be cited as the *Hire-Purchase Act 1959* [1].

(2) This Act shall come into operation on a day to be fixed by proclamation [1].

[(3), (4) deleted]

(5) The *Hire-Purchase Agreements Act 1931-1937*, and the *Hire-Purchase Act 1958* are repealed but the former Act continues to have the same operation and effect in relation to hire-purchase agreements entered into before the coming into operation of this Act as if this Act had not been enacted.

[Section 1 amended by No. 1 of 1985 s. 19; No. 70 of 2003 s. 37.]

1A. Application of Act

(1) Subject to section 1(5), this Act applies to and in relation to a hire-purchase agreement, and any agreement made in relation to a hire-purchase agreement, that have effect immediately before the day on which section 38 of the *Acts Amendment and Repeal (Competition Policy) Act 2003* comes into operation [1].

(2) Subject to this section, this Act does not apply to or in relation to an exempt hire-purchase agreement.

(3) Section 2 applies to and in relation to an exempt hire-purchase agreement as if, in subsection (2)(c) of that section, "in section 12A and" and "under section 12" were deleted.

(4) For the purposes of, and subject to, section 25, section 13(1) and (2) apply to and in relation to an exempt hire-purchase agreement as if "section 12A or" in section 13(2) were deleted.

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(5) Section 15(1) (except paragraph (a)), (2), (3) and (6) and section 17 apply to and in relation to an exempt hire-purchase agreement.

(6) Section 24 applies to and in relation to an exempt hire-purchase agreement as if —

(a) subsection (6)(a); and

(b) in subsection (6)(b) "in any other case — ",

were deleted.

(7) Section 25 applies to and in relation to an exempt hire-purchase agreement.

(8) For the purposes of subsections (4) and (7), the Third Schedule has effect in relation to an exempt hire-purchase agreement.

(9) In this section —

exempt hire-purchase agreement means a hire-purchase agreement, and any agreement made in relation to a hire-purchase agreement, entered into on or after the day referred to in subsection (1).

[Section 1A inserted by No. 70 of 2003 s. 38.]

2. ~~Interpretation~~ Terms used

(1) In this Act, unless inconsistent with the context or subject-matter —

cash includes a cheque drawn on a financial institution;

Commissioner means the person for the time being designated as the Commissioner under section 23A;

credit provider means a hire-purchase credit provider;

dealer means 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

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transaction leading to a hire-purchase agreement with the owner was arranged;

default charge in relation to an agreement means such amount as, subject to any relief granted under section 36A, is payable under the agreement by the hirer where he fails to fulfil his obligations under the agreement;

Department means the department of the Public Service principally assisting in the administration of this Act;

goods includes all chattels personal other than money or things in action;

guarantee includes an indemnity;

guarantor means a person who has guaranteed the performance by a hirer of all or any of his obligations under a hire purchase agreement and includes a person who undertakes to indemnify the owner against any loss which he may incur in respect of that 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) a letting of goods with an option to purchase; and

(b) any agreement under which 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; and

(c) any agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise) if the vendor or any person other than the hirer or his guarantor retains any interest in the goods or is or may become entitled to repossess the goods or to cause the hirer to lose his property in the goods; and

(d) any agreement 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, if the

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vendor or any person other than the hirer or his guarantor retains any interest in the goods or is or may become entitled to repossess the goods or to cause the hirer to lose his property in the goods,

but does not include —

(e) any agreement 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; or

(f) any agreement that includes a provision conferring any right or licence to occupy land on which the goods comprised in the agreement are permanently or ordinarily situated; or

(g) any agreement that is a credit sale contract under the *Credit Act 1984* or any agreement that is deemed to be a credit sale contract by that Act or any agreement that is a credit contract, or is to be regarded as a credit contract, under the *National Credit Code* (Commonwealth);

hire-purchase credit provider means a person whose business is, or includes, being an owner under hire-purchase agreements or who holds himself out as a person whose business is, or includes, being such an owner;

hirer means 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 means 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 agreement in relation to a hire-purchase agreement means the period between the commencement of the hiring and

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the time provided by the agreement for the payment of the last instalment payable thereunder;

Schedule means 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 outstanding from month to month means ~~she~~the amount of interest attributable to the period of complete months which at the relevant time is still to go under the agreement;

and

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

(i) the total amount of premium paid in respect of any annual period which at the relevant time has not yet commenced; and

(ii) 90% 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;

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(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 which at the relevant time is still to go and dividing the product so obtained by the number of complete months in the period of the agreement;

third party insurance means 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 in relation to a hire-purchase agreement means 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 means 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) A reference in this Act to the taking possession by the owner of goods comprised in a hire-purchase agreement includes a reference to —

(a) the taking possession of goods by the owner pursuant to an order by any court; and

(b) the return of goods to the owner after notice has been served pursuant to the provisions of section 13(1); and

(c) except in section 12A and in section 13(1) and (2), the taking possession by the owner as a result of the voluntary return of the goods by the hirer under section 12.

(3) Where, by virtue of 2 or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment

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of goods and either the bailee may buy the goods or the property in the goods will or may pass to the bailee, then, except where the agreements are credit sale contracts under the *Credit Act 1984* or are deemed to be credit sale contracts pursuant to that Act, 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.

[Section 2 amended by No. 107 of 1973 s. 4; No. 37 of 1980 s. 3; No. 102 of 1984 s. 8; No. 1 of 1985 s. 20; No. 30 of 1996 s. 13; No. 57 of 1997 s. 39(10); No. 24 of 2000 s. 53; No. 59 of 2004 s. 141; No. 28 of 2006 s. 101; No. 14 of 2010 s. 11(2).]

2A. Orders making Act inapplicable

(1) The Governor may, by order published in the *Government Gazette*, declare that the provisions of this Act, or such of those provisions as are specified in the order —

(a) do not have effect in relation to a specified person or to a specified class of persons; or

(b) have effect in relation to a specified person or to a specified class of persons to such extent as is specified; or

(c) do not have effect in relation to a specified transaction or matter or class of transactions or matters; or

(d) have effect in relation to a specified transaction or matter or class of transactions or matters to such extent as is specified; or

(e) do not have effect in relation to a specified transaction or class of transactions entered into by a specified person or specified class of persons or in relation to specified associated matters; or

(f) have effect in relation to a specified transaction or class of transactions entered into by a specified person or specified class of persons, or in relation to specified associated matters, to such extent as is specified.

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(2) An order made under subsection (1) —

(a) may specify the period during which the order shall remain in force; or

(b) may provide that its operation is subject to such terms and conditions as are specified in the order,

but any such order may be made only in respect of hire-purchase transactions entered into for the purpose of providing goods for Government purposes or the purpose prescribed in subsection (2a).

(2a) The purpose referred to in subsection (2) is the purpose of providing rail freight services that are available to the public, whether or not those services are to be provided by or on behalf of the State.

(3) The Governor may, by order published in the *Government Gazette*, revoke or vary an order made under this section.

(4) An order made under this section, including an order that is varied under this section, is to be taken to be a regulation for the purposes of section 42 of the *Interpretation Act 1984* and that section applies accordingly.

(5) An order in force under this section, including an order that is varied under this section, has effect according to its tenor.

(6) A person to whom an order under this section applies, including an order that is varied under this section, shall comply with the terms and conditions (if any) to which the operation of the order is subject.

Penalty: $5 000.

[Section 2A inserted by No. 43 of 1995 s. 3; amended by No. 13 of 2000 s. 95.]

*[**2B.** Deleted by No. 14 of 2010 s. 11(3).]*

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Part II — Formation and contents of hire-purchase agreements

~~**3. Summary of proposed hire-purchase transaction to be given to prospective hirer**~~

3. Preliminary requirements to entering agreement or offering to hire; form and content of agreements; consequences of non-conforming agreements

(1) 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 statement in writing duly completed in accordance with the form in the First Schedule Part 1, but 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 and a copy of the written offer was given to the prospective hirer immediately after it was so signed.

(1a) A dealer shall not deliver, or cause or permit to be delivered, to a prospective owner any offer by or on behalf of a prospective hirer unless that offer —

(a) is made in writing; and

(b) was signed by the prospective hirer or a person authorised by him and on his behalf, after the dealer had given, or caused to be given, to the prospective hirer or that authorised person a statement in writing duly completed in accordance with the form in the First Schedule Part 1.

(1b) It is a defence to a charge arising under subsection (1) or (1a) if the accused proves that he acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

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(2) Every hire-purchase agreement —

(a) shall be in writing; and

(b) shall be signed by or on behalf of the hirer and all other parties to the agreement; and

(c) shall —

(i) specify a date on which the hiring shall be deemed to have commenced; and

(ii) specify the number of instalments to be paid under the agreement by the hirer; and

(iii) specify the amounts of each of those instalments and the person to whom and the place at which the payments of those instalments are to be made; and

(iv) specify the time for the payment of each instalment; and

(v) contain a description of the goods sufficient to identify them;

and

(d) where any part of the consideration is or is to be provided otherwise than in cash, shall contain a description of that part of the consideration; and

(e) shall set out in 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***); and

(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; and

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(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***); and

(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***); and

(v) any amount included in the total amount payable to cover vehicle registration fees (in the agreement to be called ***vehicle registration fees***); and

(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***); and

(vii) any amount included in the total amount payable to cover the fees to be paid under the *Bills of Sale Act 1899*, for registration of the agreement (in this Act called and in the agreement to be described as ***agreement registration fees***); and

[(viia) deleted]

(viii) the total of the amounts referred to in subparagraphs (i), (iii), (iv), (v), (vi), (vii) and (viia) less the deposit (in this Act called and in the agreement to be described as ***amount financed***); and

(ix) the total of any other charges included in the total amount payable (in this Act called and in the agreement to be described as ***terms charges***) and also the percentage rate of the terms charges calculated in accordance with the formula provided in the Fifth Schedule; and

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(x) the total of the amounts referred to in subparagraphs (viii) and (ix) (in this Act called the ***balance originally payable under the agreement***); and

(xi) the total amount payable;

and

(f) shall contain, immediately above the space for the signature of the hirer, a clause which shall be printed as prominently as or more prominently than the terms and conditions of the agreement and which shall read as follows —

> The hirer is reminded that terms charges may differ from one hire-purchase credit provider to another and it will be in his best interests to make enquiries to satisfy himself that he is receiving the best deal in terms charges.

(3) An owner who enters into a hire-purchase agreement that does not comply with subsection (2) commits an offence against this Act.

Penalty: $5 000.

(4) Without affecting the liability of any person to be convicted of an offence against this section, but subject to subsection (4a), where a provision of this section is not complied with in relation to a hire-purchase agreement (not being a failure to comply with subsection (2)(a)), the liability of the hirer thereunder is, by force of this subsection, reduced by the amount included in the hire-purchase agreement for terms charges and that amount may be set off by the hirer against the amount that would otherwise be due or become due to the owner under the agreement.

(4a) Where a hirer alleges that the provisions of subsection (4) apply, but the owner alleges that he acted honestly and that in all the circumstances the act or omission constituting a failure to comply with a provision of this section ought to be excused and that the provisions of subsection (4) ought not to apply to or in

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relation to the hire-purchase agreement, the owner, by an application in writing to the Commissioner, a copy whereof is served on the hirer and every guarantor, may claim relief against the consequences of that act or omission.

[(4b) deleted]

(4c) On an application to the Commissioner under subsection (4a), the Commissioner, after considering any submissions made by or on behalf of —

(a) the owner; and

(b) guarantors; and

(c) the hirer,

may grant the relief claimed upon such terms and conditions as will, in the opinion of the Commissioner, do justice between the parties to the agreement and the parties to any contract of guarantee relating to the agreement.

(4d) In granting relief in respect of an application made under subsection (4a) the Commissioner shall have regard to the extent to which the hirer was, or was not, prejudiced by the act or omission relied on by the hirer as constituting a failure to comply with a provision of this section.

(4e) A grant or refusal of relief by the Commissioner in respect of an application made under subsection (4a) shall be by instrument in writing signed by him and served on the hirer, the owner, and every guarantor.

(4f) Subject to any order of the State Administrative Tribunal on an application under subsection (4g), a decision of the Commissioner in respect of an application made under subsection (4a) has effect according to its terms and, where relief is granted thereby, the operation of subsection (4), the hire-purchase agreement and any contract of guarantee relating to it are by virtue of this subsection varied to the extent necessary and as so varied are binding on the parties thereto.

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(4g) An owner, hirer, or guarantor, who is a party to a hire-purchase agreement, or a contract of guarantee relating to it, in respect of which a decision has been given by the Commissioner in respect of an application made under subsection (4a) and who is aggrieved thereby, may apply to the State Administrative Tribunal for a review of the decision.

(5) A hire-purchase agreement that is not in writing is not enforceable by the owner.

(6) Where the goods comprised in a hire-purchase agreement are all items of furniture, whether free standing or in-built, as specified in the First Schedule Part 2 and the total cash price of the goods is unknown because of some substantial alteration or addition to be made to or of some substantial work to be done in respect of all or any of the goods before delivery thereof to the hirer, it is a sufficient compliance with the requirements of subsection (1) if the statement therein referred to sets out approximate amounts in lieu of specific amounts and it is a sufficient compliance with the requirements of subsection (2)(c)(iii) and (e) in regard to amounts and cash price if the agreement sets out approximate amounts and cash price in lieu of specific amounts and cash price.

(6A) In each case referred to in subsection (6) —

(a) the amounts and price stated are clearly stated to be approximate only; and

(b) prior to the stamping of the agreement the true amounts and price are inserted therein and a further or amended statement in writing is duly completed in accordance with the form in the First Schedule and is given to the hirer.

(7) For the purposes of subsection (6) an amount or a cash price is approximate if it is within 10% of the true amount or price or within $20 thereof.

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[Section 3 amended by No. 113 of 1965 s. 8; No. 107 of 1973 s. 5; No. 37 of 1980 s. 4; No. 88 of 1980 s. 3; No. 102 of 1984 s. 9; No. 1 of 1985 s. 21; No. 12 of 2004 s. 39; No. 55 of 2004 s. 510; No. 84 of 2004 s. 82; No. 19 of 2010 s. 19(2)-(4) and- 51.]

4. ~~Certain copy~~Owner to serve certain documents ~~to be served~~ on hirer

The owner shall serve or cause to be served on the hirer within 21 days after the making of a hire-purchase agreement —-

(a) a copy of the agreement in writing; and

(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 that affect or concern the rights of the hirer,

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

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Part III — Protection of hirers

Division 1 — Warranties and conditions

5. Conditions and warranties ~~to be~~ implied in every ~~hire-purchase~~ agreement

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

(a) as regards defects of which the owner could not reasonably have been aware, or, if there is a dealer, neither the owner nor the dealer could reasonably have been aware, at the time the agreement was made; or

(b) where the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed; or

(c) 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,

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and the owner proves that the hirer has acknowledged in writing that the 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 deemed to be implied in the hire-purchase agreement a condition that the goods are reasonably fit for that purpose but no such condition shall be deemed to 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 the 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 is entitled to be indemnified by the dealer against any damage suffered by the owner through the operation of the provisions of subsection (3).

(5) Nothing in this section prejudices any other enactment or rule or 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**~~

6. Representations etc. by owner etc. to hirer, consequences of

(1) A 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

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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 first-mentioned person or the person on whose behalf he was acting (as the case requires) as a result of negotiations.

(2) A covenant, condition, or term in a 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 is void.

(3) Without prejudice to any other rights or remedies to which an owner may be entitled, an owner is 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.

[Section 6 amended by No. 107 of 1973 s. 6.]

Division 2 — Statutory rights of hirers

7. Hirer ~~to be~~ entitled to copy of agreement and statement of ~~his present position~~ amounts paid, overdue and to be paid

(1) At any time before the final payment has been made under a hire-purchase agreement the owner shall, within 14 days after he

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has received a request, whether in writing or otherwise, from the hirer or a guarantor, send to him a copy of the agreement, together with a statement in writing signed by the owner or his agent showing —

(a) each amount received under the agreement by the owner and the date on which it was received; and

(b) each amount due under the agreement and payable to the owner that has not been received by the owner and the date on which it became due; and

(c) each amount payable under the agreement to the owner that has not become due and the date on which it becomes due,

but an owner is not obliged to comply with the request if he has sent the hirer or guarantor, as the case may be, a copy of the agreement and such a statement within the period of 3 months immediately preceding the receipt of the request.

(2) If an owner contravenes subsection (1) by failing to comply with a request made pursuant to that subsection he commits an offence against this Act and is liable to a penalty of $500 and, until the default is remedied —

(a) the owner is not entitled to enforce —

(i) the agreement against the hirer; or

(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 is not enforceable against the hirer or the guarantor by any holder thereof.

[Section 7 amended by No. 107 of 1973 s. 7; No. 37 of 1980 s. 5.]

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8. **~~As to appropriation of payments when~~Payment made under 2 or more ~~than one agreement~~ agreements, apportionment of**

A hirer who is liable to make payments in respect of 2 or more hire-purchase agreements to the same owner is entitled, notwithstanding any agreement to the contrary, on making any payment in respect of the agreements that 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 2 or more of the agreements in such proportions as he thinks fit, and, if he fails to make any such appropriation, the payment shall by virtue of this section be deemed to 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~~Assigning hirer's 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 his 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 subsection (1) 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 at the request of a hirer an owner fails or refuses to give his consent to an assignment by the hirer of his right, title and interest under a hire-purchase agreement, the hirer may apply to the Magistrates Court for an order declaring that the consent of the owner to that assignment has unreasonably been withheld,

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and where an order is made that consent shall be deemed to be unreasonably withheld.

(4) As a condition of granting consent to any assignment of the right, title and interest of the hirer under a hire-purchase agreement, the owner may stipulate that all defaults under the hire-purchase agreement shall be made good and 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 those 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 and if required by the owner also the reasonable costs incurred by the owner in registering the same under the *Bills of Sale Act 1899*.

(5) The right, title, and interest of a hirer under the hire-purchase agreement is 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 relieves a personal representative or liquidator from compliance with the provisions of the agreement.

[Section 9 amended by No. 107 of 1973 s. 8; No. 59 of 2004 s. 141.]

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10. ~~Power of court to~~Court may allow goods to be ~~removed~~ moved

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 Magistrates 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 first-mentioned place.

[Section 10 amended by No. 107 of 1973 s. 9; No. 59 of 2004 s. 141.]

Division 3 — Early completion of agreements

11. Hirer ~~to be entitled to finalise agreement~~may complete purchase at any time

(1) The hirer under a hire-purchase agreement may, if he has given notice to the owner of his intention so to do, on or before ~~—~~

(a) where a day is specified for that purpose in the notice, that day; or

(b) where no day is specified for that purpose in the notice, the day proceeding the day on which the next instalment becomes due after the receipt, by or on behalf of the owner, of that 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 is 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; and

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(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.

(2a) Where a hirer gives notice of his intention to complete the purchase of the goods under subsection (1), and in, or at the time of giving, that notice requests the owner to furnish him with particulars of the net balance due to the owner under the agreement to complete the purchase of the goods in accordance with that notice, the owner shall furnish him with a statement setting out particulars of the net balance due showing the amounts by reference to which the net balance due is to be calculated under subsection (2) as at the day specified pursuant to paragraph (a) of that subsection or on which, pursuant to paragraph (b) of that subsection, the notice has effect.

(2b) A person who, in furnishing the particulars required by or for the purposes of subsection (2a) —

(a) makes or authorises the making of a statement that is false or misleading in a material particular; or

(b) omits or authorises the omission of any matter or thing without which the particulars are misleading in a material respect,

without having taken all reasonable steps to ensure that the statement was not false or misleading or to ensure that the particulars did not omit any matter or thing without which the particulars would be misleading, as the case may be, commits an offence against this Act.

(2c) A person who fails or refuses to comply with a request made under subsection (2a) commits an offence against this Act.

(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

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(b) where the owner has taken possession of the goods, on paying or tendering to the owner before or within 21 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.

[Section 11 amended by No. 37 of 1980 s. 6.]

Division 4 — Voluntary return of goods

12. ~~Power of hirer to determine~~Terminating hiring by returning goods

(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 the return of the goods to either place terminates 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 such a 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 Magistrates Court for an order fixing

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the place to which the goods may be returned under subsection (2)(b).

(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) The hirer shall deliver to the owner written notice of an application under this section, not less than 24 hours before the application is to be heard.

(6) Division 5, except section 12A and section 13(1) and (2) apply, with such modifications as are necessary, to and in relation to the taking possession by the owner as a result of the voluntary return of the goods by the hirer under this section; and this section, and any voluntary return of goods, court order, and termination of hiring under or pursuant to this section, are subject to the provisions of that Division that do so apply.

[Section 12 amended by No. 107 of 1973 s. 10; No. 59 of 2004 s. 141.]

Division 5 — Repossessions

~~**12A. Protected goods**~~

12A. Repossession requires Commissioner's consent in some cases

(1) Where a hire-purchase agreement has not been terminated by the hirer and —

(a) 75% of the total amount payable under the agreement has been paid (whether in pursuance of a court order or otherwise) by or on behalf of the hirer or guarantor; and

(b) the hirer does not —

(i) part with, or attempt to part with, possession of the goods, without the consent of the owner; or

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(ii) commit, or attempt to commit, an offence under section 33 or 34;

and

(c) the right, title, and interest of the hirer under the agreement is not assigned other than in accordance with section 9,

the owner may exercise any power of taking possession of goods comprised in the agreement only with the consent of the Commissioner.

(2) Where at the request of the owner the Commissioner fails or refuses to give the consent required by subsection (1), the owner may apply to the State Administrative Tribunal for a review of the failure or refusal of the Commissioner to give his consent.

[Section 12A inserted by No. 107 of 1973 s. 11; amended by No. 55 of 2004 s. 511.]

13. ~~Notices to be given to hirer when~~Procedure for and on repossessing goods ~~repossessed~~

(1) Subject to this section, 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 and every guarantor a notice, in writing, in the form of the Third Schedule and the period fixed by the notice (being not less than 7 days after the service of the notice) has expired.

(2) An owner is not obliged to comply with section 12A or subsection (1) 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 those grounds lies upon the owner.

(3) Within 21 days after the owner has taken possession of goods that were comprised in a hire-purchase agreement he shall serve

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on the hirer and every guarantor a notice, in writing, in the form of the Fourth Schedule.

(4) If the notice required by subsection (3) is not served, the rights of the owner under the hire-purchase agreement cease and determine, but, if the hirer exercises his rights under this Act to recover the goods so taken possession of, the agreement has 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.

[Section 13 amended by No. 107 of 1973 s. 12.]

14. Owner to retain ~~possession of goods~~ repossessed goods for 21 days

Where an owner has taken possession of any goods he shall not, without the consent in writing of the hirer and every guarantor but subject to section 15, sell or dispose of the goods or part with possession thereof until after the expiration of 21 days from the date of the service on the hirer of the notice referred to in section 13(3) or, if notice under section 15(1)(a)(i) has been given, until the time for payment or tender pursuant to that notice has expired (whichever is the later).

[Section 14 amended by No. 107 of 1973 s. 13.]

15. ~~As to hirer's~~Hirer's rights and immunities ~~when goods repossessed~~ on repossession

(1) Where the owner takes possession of any goods comprised in a hire-purchase agreement, the following provisions have effect, namely ~~—~~

(a) the hirer may, before or within 21 days of the service on him of the notice referred to in section 13(3), 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

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with the provisions of section 16) the goods which have been repossessed; 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 first-mentioned notice;

and

(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;

and

(c) the owner is not 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.

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(2) For the purposes of this section —

(a) the net amount payable is the total amount payable less the statutory rebates for terms charges, insurance and maintenance as at the time of the owner taking possession of the goods; and

(b) the value of any goods at the time of the owner taking possession thereof is —

(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 that person,

less —

(iii) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods; and

(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 that could reasonably be obtained by him at the time when he took possession of the goods lies upon the owner.

(4) Except where the owner has failed to serve on the hirer a notice as required by section 13(3), no amount is recoverable by the hirer under this section unless —

(a) the hirer, within 21 days after the owner has served such a notice, gives to the owner notice in writing —

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(i) setting out the amount claimed under the provisions of this section and the amount that is claimed by the hirer to be the value of the 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 are commenced not earlier than 7 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 3 months after the giving by the hirer to the owner of the notice referred to in paragraph (a).

(5) If, before any proceedings mentioned in subsection (4)(b) 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 the proceedings is entitled to pay into court the amount so offered and, upon so doing, is entitled to the same rights as if that amount had been tendered to the hirer before the proceedings were commenced: but no such right is 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.

(6) Where arising from the circumstances of the taking possession by the owner of goods comprised in a hire-purchase agreement, or an attempt at such taking, a hirer has a right of civil action against a person involved in the taking or the attempt, the hirer has a like right against the owner, but the person involved in the taking or the attempt shall indemnify the owner against all liability incurred by the owner pursuant to this subsection.

[Section 15 amended by No. 107 of 1973 s. 14.]

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16. ~~Power of hirer to regain possession~~Hirer may obtain return of goods in ~~certain circumstances~~ some cases

(1) If, within 14 days after giving notice to the owner pursuant to the provisions of section 15(1)(a), 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 that payment or tender; and

(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.

(2) Where goods are returned to the hirer pursuant to subsection (1) and any breach has not been remedied, the owner has no right arising out of that breach to take possession of those goods unless ~~—~~

(a) by notice in writing given to the hirer at the time of the return of the goods he specifies the breach and requires it to be remedied; and

(b) the hirer fails within 14 days or within the time specified in the notice (whichever is the longer) after receiving the notice to remedy the breach.

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(3) For the purposes of subsection (1)(a), where the hirer makes a payment or tender referred to in that paragraph, the hiring shall be deemed to have continued up to the date on which that payment or tender was made.

[Section 16 amended by No. 107 of 1973 s. 15.]

17. ~~Power of court to~~Court may vary existing judgments ~~or orders when~~etc. against hirer if goods are repossessed

In any legal proceedings in relation to a hire-purchase agreement, after the owner has taken possession of the goods, the court before which the proceedings are brought may vary or discharge any judgment or order of any court against the hirer for the recovery of money so far as is necessary to give effect to the provisions of section 15.

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Part IV — Guarantees

18. ~~Provisions as to guarantors~~ Guarantors

(1) Except as otherwise provided in this Act a guarantor is not, by reason of the operation of this Act, discharged from liability under his guarantee.

(2) The liability of a guarantor continues 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 operates 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 is liable to any further or other extent than the hirer, the performance of whose obligations he has guaranteed; but, subject to section 19, nothing in this Act affects any agreement by the guarantor binding him to the performance of any obligation that 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, the guarantor who has paid any moneys to the owner in accordance with his guarantee has the like right in like manner to recover those 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.

(5) Notwithstanding anything in subsection (4), no moneys shall be recovered by the guarantor in excess of the moneys actually paid by him in accordance with his guarantee.

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(6) Where it is proposed that a person is to be guarantor —

(a) if it is so proposed before the hire-purchase agreement is entered into —

(i) the owner or, if there is a dealer, the dealer shall give or cause to be given to the prospective guarantor the statements that are required to be given to the prospective hirer under section 3(1), at the time they are required to be given to the prospective hirer; and

(ii) if the prospective guarantor becomes a guarantor, the owner shall serve or cause to be served on the guarantor within 21 days after the making of the hire-purchase agreement, a copy of the documents that are required to be served on the hirer under section 4 and also a copy of the contract of guarantee;

and

(b) if it is so proposed after the hire-purchase agreement has been entered into —

(i) the owner or, if there is a dealer, the dealer shall, before the contract of guarantee is entered into, give or cause to be given to the prospective guarantor a copy of all the statements and other documents that were required to be given to the hirer under sections 3 and 4; and

(ii) the owner shall, before the contract of guarantee is entered into, give or cause to be given to the prospective guarantor a statement writing signed by the owner or his agent showing current details of the matters referred to in section 7(1)(a), (b) and (c); and

(iii) if the prospective guarantor becomes a guarantor, the owner shall serve or cause to be served on the

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guarantor within 21 days after the making of the contract of guarantee, a copy of it,

but the foregoing provisions of this subsection do not apply to or in relation to a contract of guarantee executed and certified in accordance with section 19.

(7) At any time before the final payment has been made under a hire-purchase agreement the owner shall, within 14 days after he has received a request in writing from any guarantor, send to him a copy of the contract of guarantee, but an owner is not obliged to comply with the request if he has sent the guarantor a copy of the contract of guarantee within a period of 3 months immediately preceding the receipt of the request.

(8) If an owner contravenes subsection (7) he commits an offence against this Act and is liable to a penalty of $100 and until the default is remedied —

(a) the owner is not entitled to enforce the contract of guarantee; and

(b) any security given by the guarantor is not enforceable against the guarantor by any holder thereof.

(9) Where a hirer, not being a body corporate, is under the age of 18 years, only —

(a) a parent or legal guardian of the hirer; or

(b) a person approved by a parent or legal guardian of the hirer; or

(c) if there is no parent or legal guardian of the hirer, a person approved by the CEO as defined in section 3 of the *Children and Community Services Act 2004*,

can act as guarantor of the hirer.

(10) The CEO as defined in section 3 of the *Children and Community Services Act 2004* (the ***CEO***) may in writing signed by the CEO delegate the power conferred by

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subsection (9)(c) to any other officer as defined in section 3 of that Act, and an officer to whom that power is delegated —

(a) may exercise the power in the same manner and with the same effect as if the power were directly conferred on the officer by this Act and not by delegation; and

(b) is presumed to exercise the power in accordance with the terms of the delegation in the absence of proof to the contrary,

but any such delegation may be revoked wholly or partly by the CEO at any time and does not prevent the CEO from exercising the power.

[Section 18 amended by No. 107 of 1973 s. 16; No. 37 of 1980 s. 7; No. 121 of 1984 s. 31; No. 57 of 1997 s. 72; No. 34 of 2004 ~~s. 251.]~~ Sch. 2 cl. 13.]

19. ~~Guarantor~~Some agreements by guarantor void if 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 hire-purchase agreement; or

(b) to perform an obligation in respect of goods other than the goods comprised in a hire-purchase agreement; or

(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 that are subject to the hire-purchase 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,

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the agreement so entered into by the guarantor is void and the owner under the hire-purchase agreement concerned commits an offence against this Act unless the agreement is executed by the guarantor in the presence of a solicitor instructed and employed independently of the owner and 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 solicitor shall not give a certificate in respect of an agreement under subsection (1) 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; and

(b) he has examined the guarantor touching his knowledge of the agreement; and

(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 solicitor to comply with subsection (2) in respect of a certificate does not invalidate the certificate.

[Section 19 amended by No. 107 of 1973 s. 17.]

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Part V — Insurance

20. ~~As to insurance~~**Insurance of goods** ~~comprised in hire-purchase agreements~~ **hired under agreement**

(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) Where an owner requires a hirer to insure against any risk, the owner shall supply a list of not less than 20 insurers that are acceptable to the owner.

(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 an insurer on the list supplied by the owner pursuant to subsection (2).

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

(5) 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 is entitled to the benefit of the rebate and any person who knowingly pays or allows any such rebate to an owner commits an offence against this Act.

(6) Where —~~-~~

(a) an insurer or other person pays or confers any commission or other benefit to or upon an owner, dealer, or other person in respect of a contract of insurance required by the owner under this section; and

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(b) the amount or value of the commission or benefit (or where separate commissions or benefits have been paid the aggregate amount or value thereof) exceeds 20% of the total amount payable by way of premium or premiums under the contract of insurance,

the insurer and the person to or upon whom the commission or other benefit was paid or conferred each commit an offence against this Act.

[Section 20 amended by No. 107 of 1973 s. 18.]

21. ~~Powers of court in relation~~Court's powers as to insurance contracts associated with hire-purchase agreements

(1) In any proceedings taken in any court in respect of a 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 (2), 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 may, unless an order excusing the failure concerned has already been made under subsection (1), 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 is made under subsection (1) or (2), the rights and liabilities of all persons in respect of the contract of insurance concerned is determined as if the failure the subject of the order had not occurred.

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22. ~~As to contents of contracts~~Contracts of insurance and related agreements, content of

(1) Every contract of insurance (not being a contract of third party insurance) and statement served upon a hirer pursuant to section 4 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 (3), 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; or

(b) providing that no action or suit is maintainable upon a contract of insurance or against the insurer in respect of any claim under, or difference or dispute arising out of, the contract unless the claim, difference, or dispute has been referred to arbitration or an award pursuant to arbitration proceedings has been first obtained; or

(c) providing that arbitration or an award pursuant to arbitration proceedings is a condition precedent to any right of action or suit upon a contract of insurance; 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 a contract of insurance,

does 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

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insurance to submit that difference or dispute to arbitration has effect as if subsection (2) had not been enacted.

23. Application of Part V

(1) The provisions of sections 21 and 22 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 premium or other sum payable for the cover given by the contract of insurance, or any part of that premium or sum, was included as part of the total amount payable for the goods comprised in a hire-purchase agreement.

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

[Part VA (s. 23A-23V) deleted by No. 102 of 1984 s. 10.]

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Part VI — Miscellaneous

*[**23W.** Deleted by No. 28 of 2006 s. 102.]*

23A. Commissioner

(1) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the Department as the Commissioner for the purposes of this Act.

(2) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.

(3) In this section —

executive officer has the meaning given by section 3(1) of the *Public Sector Management Act 1994*.

[Section 23A inserted by No. 28 of 2006 s. 102.]

23B. Delegation by Commissioner

(1) The Commissioner may delegate to any other person employed in the Department any power or duty of the Commissioner under another provision of this Act.

(2) The delegation must be in writing signed by the Commissioner.

(3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

(4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

[Section 23B inserted by No. 28 of 2006 s. 102.]

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24. ~~Power of court to~~Court may reopen certain hire-purchase transactions

(1) In any proceedings under this Act or arising out of a hire-purchase agreement or instituted pursuant to subsection (4) where it appears to the court that the transaction is harsh and unconscionable (by reason of a provision for terms charges or other charges that are, in the circumstances of the case, excessive or by reason of any other provision of whatever kind) or is otherwise such that the Supreme Court in its equitable jurisdiction would give relief the court may reopen the transaction and take an account between the parties thereto.

(2) The court by which a transaction is reopened 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) reopen any account already taken between the parties; and

(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; and

(c) set aside either wholly or in part or revise or alter any agreement made or security given in connection with the transaction; and

(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 by which a transaction is reopened under this section that any person other than the owner has shared in the profits of or has any beneficial interest

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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 proceedings and may give judgment against that person for such amount as it thinks fit or for 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 the Magistrates Court, or The District Court of Western Australia established under the *District Court of Western Australia Act 1969*, irrespective of any limit which would otherwise apply to the jurisdiction of either of those courts, by the hirer or any guarantor under a hire-purchase agreement for the purpose of obtaining relief under this section.

(5) In any proceedings under this section the court has and may exercise all or any of the powers conferred by subsections (1), (2) and (3) 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) where the owner has taken possession of the goods comprised in the agreement — after the expiration of a period of 4 months from the time when the owner serves on the hirer the notice required by section 13(3) to be served on him; or

(b) in any other case — after the expiration of a period of 4 months from the time when the transaction is closed.

[Section 24 amended by No. 107 of 1973 s. 20; No. 59 of 2004 s. 141.]

25. ~~Power of court to restrain repossession of~~Repossessing certain goods from ~~farmer~~ farmers

(1) Where —

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(a) goods consisting of a harvester, binder, tractor, plough or other agricultural implement or a motor truck, motor cycle, motor utility 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 section 13(1) shall, notwithstanding the period specified in that subsection, be a period of not less than 30 days after the service of the notice.

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

(3) If the court is satisfied that, within 12 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 12 months as the court fixes.

(4) An order under subsection (3) 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 principally engaged in agriculture, pasturage, 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.

[Section 25 amended by No. 107 of 1973 s. 21; No. 59 of 2004 s. 141.]

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~~**26. Liens**~~

26. Lien of worker on hired goods

(1) Subject to subsection (2), 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.

~~**27. Fixtures**~~

27. Hired goods that have become 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 subsection (1), the owner is not entitled to repossess goods which have been affixed to a dwelling-house 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.

~~**28. Avoidance of certain provisions**~~

28. Provisions in agreements that are void

(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; or

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(b) a 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 hire-purchase agreement in accordance with this Act; or

(c) the hirer under a hire-purchase agreement is subject to any greater liability on the determination, in any manner, of the hire-purchase agreement or of the bailment thereunder, than the liability to which he would be subject if the hire-purchase agreement were determined in accordance with this Act; or

(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 hire-purchase agreement but not paid exceeding a sum equal to the simple interest on that amount calculated at the rate of 8% per annum on a daily basis for the period for which it is due and not paid; or

(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 hire-purchase agreement is to be treated as, or declared to be, the agent of the hirer; or

(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 hire-purchase agreement; or

(g) the owner under a hire-purchase agreement or any person acting on his behalf is authorised to enter upon any premises for the purpose of taking possession of goods comprised in the hire-purchase agreement or is relieved from liability for any such entry; or

(h) the operation of a hire-purchase agreement is determined or modified or any person is authorised to repossess any

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goods comprised in a hire-purchase agreement if the hirer becomes, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws or commits an act of bankruptcy (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,

is void.

(2) Where any agreement or other document contains a provision that is void under subsection (1), the owner under the relevant hire-purchase agreement concerned commits an offence against this Act.

[Section 28 amended by No. 18 of 2009 s. 42.]

29. ~~Restrictions on payments to owners of goods~~Payments etc. by financiers to dealers, restrictions on

(1) If in connection with any goods any person (in this section called the ***dealer***) arranges that some other person (in this section called the ***financier***) shall ~~—~~

(a) enter into a hire-purchase agreement in relation to those goods with a hirer; or

(b) accept any assignment of the dealer's property in the goods comprised in a hire-purchase agreement, or of the dealer's rights under a hire-purchase agreement in respect of those goods; 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 those goods,

the dealer shall not seek, accept, demand or receive from the financier and the financier shall not pay, offer, or grant to the dealer, directly or indirectly, any money or other valuable consideration that, together with the money (if any) paid or

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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.

(2) Notwithstanding anything in subsection (1) —

(a) 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

(b) 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.

30. ~~Certain~~Some transactions as to bailment prohibited

Any person (in this section called the ***owner***) who knowingly —

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

(b) takes from any person (in this section called 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), on terms and conditions that, if the offer in writing to purchase the

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goods is accepted, will constitute a hire-purchase agreement, commits an offence against this Act.

31. ~~As to securities~~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 is liable to indemnify the hirer or guarantor, as the case may be, in respect of the amount of the excess.

32. False statements by dealers etc. in proposals

A dealer or his agent or employee 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, his agent, or his employee, as the case may be, any false statement or representation that is false in any material particular commits an offence against this Act and is liable to a penalty of $5 000.

[Section 32 amended by No. 107 of 1973 s. 22; No. 37 of 1980 s. 9; No. 78 of 1995 s. 147.]

33. 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,

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or, if the goods are not in his possession, to whom he delivered the goods or the circumstances in which he lost possession of them and any hirer who does not within 14 days after the receipt of the notice give to the owner the statement or who gives a statement containing any information which is to the knowledge of the hirer false, commits an offence against this Act.

34. Fraudulent sale or disposal of goods by hirer

A 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, commits an offence against this Act and is liable to a penalty of $1 000.

[Section 34 amended by No. 113 of 1965 s. 8; No. 78 of 1995 s. 147.]

35. ~~Power of court to~~Court may extend prescribed 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 Magistrates Court or the court in which the proceedings are proposed to be instituted (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.

[Section 35 amended by No. 107 of 1973 s. 23; No. 59 of 2004 s. 141.]

36. ~~Power of court to~~Court may order delivery of goods unlawfully detained

(1) Upon application made to the Magistrates Court 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, claiming 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

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or by an agent of the owner authorised in that behalf, 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) A person who fails or refuses to comply with an order made under this section commits an offence against this Act.

[Section 36 amended by No. 107 of 1973 s. 24; No. 59 of 2004 s. 141; No. 8 of 2009 s. 74.]

36A. Relief against consequences of breach of agreement by hirer

(1) Where by reason of sickness, unemployment or other reasonable cause of a hirer that was not reasonably foreseeable by him at the time of entering into a hire-purchase agreement, the hirer is temporarily unable to discharge his obligations under the agreement he may by an application in writing to the Commissioner, a copy whereof is served on the owner and every guarantor, claim relief against the consequences of breach of the agreement.

(2) On an application to the Commissioner under this section, the Commissioner, after considering any submissions made by or on behalf of —

(a) the hirer; and

(b) the owner; and

(c) guarantors,

may grant the relief claimed upon such terms and conditions as will, in the opinion of the Commissioner, do justice between the parties to the agreement and the parties to any contract of guarantee relating to the agreement.

(2a) Relief granted under this section may include a provision, where so requested at the time the application for relief is being considered by the Commissioner, authorising the owner, in lieu of recovering the payment of any sum (whether or not it is described in the

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agreement as interest) in respect of any amount due under the agreement but not paid, to make a deferral charge in relation to any period in respect of which relief is granted of an amount —

(a) which is approved by, and specified in the order made by, the Commissioner; and

(b) which does not exceed the additional amount that would have been payable under the agreement had the agreement been entered into for the period as extended by the relief granted together with any insurance and agreement registration fees payable in respect of a contract arising out of, and in relation to, the relief granted.

(2b) Where an owner makes a charge authorised by the Commissioner in respect of the deferral in accordance with this section of the payment of an amount payable under the agreement, a default charge is not payable to the owner by the hirer in respect of the amount deferred.

(3) In granting relief under this section the Commissioner —

(a) may extend the time for payment of any instalment or other amount under the agreement for a period of 3 months from the date of granting the relief or, in exceptional circumstances, for a period of 6 months from that date; and

(b) where the hirer has committed any breach of the agreement may re-instate him in the agreement subject to the terms and conditions upon which the relief is granted but otherwise in all respects as if no breach had occurred.

(4) A grant or refusal of relief by the Commissioner under this section shall be by instrument in writing signed by him and served on the hirer, the owner, and every guarantor.

(5) Subject to any order of the State Administrative Tribunal on an application under this section, a decision of the Commissioner

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under this section has effect according to its terms and, where relief is granted thereby, the hire-purchase agreement and any contract of guarantee relating to it are by virtue of this section~~-~~ varied to the extent necessary and as so varied are binding on the parties thereto.

(6) An owner, hirer, or guarantor, who is a party to a hire-purchase agreement, or a contract of guarantee relating to it, in respect of which a decision has been given by the Commissioner under this section and who is aggrieved thereby, may apply to the State Administrative Tribunal for a review of the decision.

[Section 36A inserted by No. 107 of 1973 s. 25; amended by No. 37 of 1980 s. 10; No. 102 of 1984 s. 11; No. 1 of 1985 s. 23; No. 55 of 2004 s. 512; No. 12 of 2008 ~~s. 52.]~~ Sch. 1 cl. 15.]

*[**36B.** Deleted by No. 102 of 1984 s. 12.]*

36C. ~~Powers of investigation~~Investigation powers

The *Fair Trading Act 2010* section 61 and Part 6 of that Act apply to this Act.

[Section 36C inserted by No. 58 of 2010 s. 187.]

37. ~~As to service~~Service of notices and proof of service

(1) Any notice or document required or authorised to be served on or given or sent to an owner or hirer under this Act may be so served or given or sent —~~-~~

(a) by delivering it to him personally; or

(b) by leaving it at his place of abode or business with some other person apparently an inmate thereof or employed there at and apparently of or over the age of 16 years; or

(c) by posting it addressed to him at his last known place of abode or business.

(2) The affidavit or oral evidence of an owner or his servant or agent as to the delivery or posting of any notice or document

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required to be served by this Act is admissible as *prima facie* evidence of the due service of the notice or document 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.

37A. ~~Orders dispensing~~Court may dispense with service

(1) Where this Act requires the service on a person of a notice, statement, or other document or requires that a specified time elapse after such service, the Magistrates Court, if satisfied on an application made by or on behalf of the person required to effect service either that the person to be served is evading service or that for any other reason service has not been and cannot be promptly effected, may order that the requirement for service be dispensed with upon such terms and conditions, if any, as the court thinks fit.

(2) An order under subsection (1) shall have effect, subject to observance of its terms and conditions, to permit any act or thing to which the order dispensing with service relates to be done as if service had been effected or the specified time had elapsed.

(3) An application under this section may be made whether or not the time for service has expired.

(4) In this section ***serve*** includes "give", "deliver", or other similar or cognate expressions.

[Section 37A inserted by No. 37 of 1980 s. 12; amended by No. 59 of 2004 s. 141.]

38. ~~Size, etc.,~~Text of ~~type, etc., required in certain~~ prescribed documents to be legible etc.

(1) Any prescribed document or part thereof that —

(a) is in handwriting that is not clear and legible; or

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(b) is printed in type of a size smaller than 10 point or of a face that is not approved by the Commissioner,

shall, for the purposes of this Act, be deemed not to be in writing.

(2) In this section, ***prescribed document*** means —

(a) any hire-purchase agreement; and

(b) any statement under section 3(1); and

(c) any copy of an agreement, notice, or statement required by section 4 to be served on a hirer; and

(d) any statement required by section 7(1) to be sent to a hirer; and

(e) any notice under section 13(1) or (3); and

(f) any document, notice, or statement or copy thereof required by section 7(1) or by section 18 to be given to, served on, or sent to a guarantor.

[Section 38 amended by No. 107 of 1973 s. 26.]

39. Penalty General offence and penalty

(1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act.

(2) A person who commits an offence against this Act for which no other penalty is expressly provided in this Act, is liable to a penalty of $1 000.

[Section 39 amended by No. 107 of 1973 s. 27.]

40. Time limit for commencement of prosecution prosecutions

A prosecution for an offence against this Act may be commenced at any time within 12 months after the commission of the offence.

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40A. Regulations

(1) The Governor may make such regulations as are contemplated by this Act or as he considers necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may —

[(a)-(g) ~~*repealed*~~*deleted]*

(h) prescribe the matters to which the Commissioner shall have regard in considering applications for relief under section 36A and exercising his powers thereunder.

[Section 40A inserted by No. 107 of 1973 s. 28; amended by No. 5 of 1974 s. 7; No. 102 of 1984 s. 14.]

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First Schedule — Statement to be given to hirer

[s. 3]

[Heading inserted by No. 19 of 2010 s. 19(5).]

Part 1 — Form of statement

[Heading inserted by No. 19 of 2010 s. 19(5).]

SUMMARY OF PROPOSED HIRE-PURCHASE AGREEMENT BETWEEN:
Proposed Hirer: ..... Full Name and Address
Age: (If under 18 years of age): .....
Owner: ..... Name and Address
Dealer: ..... Name and Address
Guarantor: ..... (If applicable) Name and Address

Short Description of Goods —

.....
.....
.....
.....
.....
.....

New/Secondhand

Year ..... Model
.....

~~Colour~~ .....
Colour
.....

INSTALMENTS
(Insert here clearly the commencing date, frequency, and duration of instalment payments)

	$	c
CASH PRICE	.....	.....
Less Deposit (a) Money.....	.....	.....
(b) Other — Trade in Allowance.....	.....	.....
RESIDUE	.....	.....
Add: Maintenance	.....	.....
" Freight	.....	.....
" Vehicle Registration Fees	.....	.....
" Insurance	.....	.....
" Agreement Registration Fees	.....	.....

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To (Person and Address) .... Being ..... Payments of .... Payments of .... Final Payment of	AMOUNT FINANCED	.....	.....
	Add: Terms Charges ..... (Percentage Rate)	.....	.....
	Balance Originally Payable Under the Agreement	.....	.....
	Add Deposit Above	.....	.....
	TOTAL AMOUNT PAYABLE ..... (Including Deposit)	.....	.....

FOR ATTENTION OF PROPOSED HIRER:

THE HIRER IS REMINDED THAT TERMS CHARGES MAY DIFFER FROM ONE HIRE-PURCHASE CREDIT PROVIDER TO ANOTHER AND IT WILL BE IN HIS BEST INTERESTS TO MAKE ENQUIRIES TO SATISFY HIMSELF THAT HE IS RECEIVING THE BEST DEAL IN TERMS CHARGES.

FOR ATTENTION OF GUARANTOR (If applicable):

THIS SUMMARY IS SENT TO YOU AS PROSPECTIVE GUARANTOR OF .....

.....

AS A GUARANTOR YOU WOULD HAVE CERTAIN RIGHTS UNDER THE *HIRE-PURCHASE ACT 1959* — IN PARTICULAR SEE SECTIONS 4, 7, 13, 14, 18, 19, 24, 31, 36A.;

REBATE ON TERMS CHARGES

(there shall be inserted under this heading, in the same type as the clause above "FOR ATTENTION OF PROPOSED HIRER", such explanation of the hirer's right to statutory rebate as is prescribed).

Part 2 — Furniture

[Heading inserted by No. 19 of 2010 s. 19(6).]

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Chairs, tables, desks and bureaus, kitchenettes, cupboards, beds, divans, lounges or settees, dressing tables, wardrobes, lowboys, lamp stands and lamp shades, hall stands, bookcases, mattresses, pillows and pillow cases, cushions, quilts and bedspreads, blankets, sheets, table cloths, curtains and curtain materials, pictures and picture frames, floor coverings, door mats, window treatments, blinds and awnings-interior and exterior, wall mirrors, vases, cooking utensils, cutlery, sewing machines, bassinets, perambulators, chests, smokers' stands, glassware and traymobiles but not any of the foregoing which are powered or heated by electricity.

[First Schedule amended by No. 107 of 1973 s. 29.]

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Second Schedule — Advice to hirers

[s. 4 and 18]

[Heading inserted by No. 19 of 2010 s. 19(7).]

Under the provisions of the *Hire-Purchase Act 1959* —

(a) you and each of your guarantors (if any) 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; each of you may not request a copy or a statement more than once in 3 months;

(b) each of your guarantors (if any) is entitled to a copy of the contract of guarantee if he makes a written request to the owner for it; he may not request a copy more than once in 3 months;

(c) 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 *Hire-Purchase Act 1959*, section 9;

(d) 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 *Hire-Purchase Act 1959*, section 11 and see also the regulations made under that Act;

(e) if you are unable to pay your instalments you are entitled to return the goods to the owner at your own expense in accordance with section 12 of the *Hire-Purchase Act 1959*, and if you do you will have like rights to a person whose goods have been repossessed by the owner under Division 5 of Part III of the *Hire-Purchase Act 1959* — for details see sections 12, 13, 14, 15, 16, and 17 of that Act.

Note — Where this advice is sent to a guarantor it shall be endorsed as follows —

This advice is sent to you as guarantor of .....
.....
.....
.....

As a guarantor you have certain rights under the *Hire-Purchase Act 1959* — in particular see sections 7, 13, 14, 18, 19, 24, 31 and 36A.

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[Second Schedule inserted by No. 107 of 1973 s. 29.]

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Third Schedule — Notice of intention to repossess

[s. 13(1)]

[Heading inserted by No. 19 of 2010 s. 19(8).]

TAKE NOTICE that ~~....., the owner of*..... hired by .....~~ ....., the owner of*..... hired by ..... under an agreement (insert name of hirer) ~~dated the ..... day of .....~~ dated the ..... day of ..... 20~~.....~~....., intends to retake possession of the goods after the expiration of † ..... days from the service of this notice on the hirer and every one of his guarantors (if any) unless the arrears of instalments which now amount to $ ~~.....~~..... ~~are paid to ..... at .....~~ are paid to ..... at ..... on or before ~~.....~~..... 20 .....

Total amount payable ~~.....~~.....	~~$ .....~~$ .....
Amount paid or provided by hirer to ..... / ..... /20.....	~~$ .....~~$ .....
Arrears under agreement to ..... / ..... /20.....	~~$ .....~~$ .....

* Insert description of goods.

† Insert number of days, not being less than 7, or, where the hirer is a farmer and s. 25 of the Act applies not being less than 30.

[Third Schedule inserted by No. 107 of 1973 s. 29.]

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Fourth Schedule — Advice to hirers

[s. 11(3), 13(3), 14, 15 and 24(6)]

[Heading inserted by No. 19 of 2010 s. 19(9).]

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

(a) if, within 21 days; you require the owner, by notice in writing signed by you or your agent, to redeliver the goods to you and if, within 14 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 repossession	$ .....
Cost of redelivery	$ .....
~~Total .....~~	
Total	$ .....

— *or* —

(b) if, within 21 days, you give notice of your intention to finalise the agreement and pay the balance due under the agreement and cost of the repossession:

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

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Total amount payable under the agreement	$ .....
Less deposit and instalments paid	$ .....
Balance due under agreement	$ .....
Less statutory rebates	$ .....
Add costs of repossession	$ .....
Storage, repair or maintenance	$ .....
~~Total .....~~ Total	$ .....

If you don't reinstate or finalise the agreement you will be liable for the owner's loss unless the value of the goods repossessed 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 repossessed 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., †

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* 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 21 days after the service on, or posting of this notice, to you and every one of your guarantors (if any) if you do not take action.

If you think you have any rights under the *Hire-Purchase Act 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 1959*, and you should seek advice at once.

[Fourth Schedule amended by No. 107 of 1973 s. 29.]

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Fifth Schedule — Formula for calculating percentage rate of terms charges

[s. 3(2)(e)(ix)]

[Heading inserted by No. 19 of 2010 s. 19(10).]

1. Formula for calculating percentage rate of terms charges

(1) The rate at which the terms charges accrues upon the principal is that nominal annual percentage rate (correct to within one-half of one per cent) which, when applied to the unpaid balances of the principal calculated according to the actuarial method will yield a sum equal to the total amount of the terms charges.

(2A) In lieu of applying the actuarial method above, where repayment of the principal and terms charges is to be made by equal regular periodic payments, the first of which is to fall due at the end of the first period, then the nominal annual percentage rate referred to in paragraph (1) may be calculated in accordance with the following formulae: —

(a) to calculate the flat rate of interest per cent:

$$\cancel{F = \frac{100\ c\ x\ t}{n\ x\ P}}$$

$$F = \frac{100\ c\ x\ t}{n\ x\ P}$$

(b) to convert the flat rate of interest per cent into the nominal annual percentage rate:

$$\cancel{R = \frac{2nF\ (300\ c + nF)}{2n^2\ F + 300\ c\ (n + 1)}}$$

$$R = \frac{2nF\ (300\ c + nF)}{2n^2\ F + 300\ c\ (n + 1)}$$

where (in each case)

"F" = the flat rate of interest per cent

"c" = the number of payments per annum

"t" = the total amount of the terms charges

"n" = the number of payments

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"P" = the amount financed

"R" = the nominal annual percentage rate

(2B) For the purpose of applying the above formulae, all payments shall be deemed to be equal if the variance between any one payment only and all other payments does not exceed 5%.

(3) The disclosure of a percentage rate which is greater than the percentage rate required to be disclosed by either of the above methods shall be a sufficient disclosure.

[Fifth Schedule inserted by No. 107 of 1973 s. 29; amended by No. 19 of 2010 s. 51.]

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Notes

1 This reprint is a compilation as at 18 February 2011 of the *Hire-Purchase Act 1959* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
Hire-Purchase Act 1959	58 of 1959 (8 Eliz. II No. 58)	3 Dec 1959	31 Mar 1960 (see s. 1(2) and *Gazette* 26 Feb 1960 p. 475)
Reprint of the *Hire-Purchase Act 1959* authorised 14 Jan 1963			
Decimal Currency Act 1965	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
Hire-Purchase Act Amendment Act 1973	107 of 1973	4 Jan 1974	s. 1-3 except para. (a), 4 except para. (a)(ii)-(v) and the provision in para. (a)(vii) in respect of the interpretation of "Local Court", and para. (b), 19 and 28: 1 Apr 1975 (see s. 2 and *Gazette* 24 Jan 1975 p. 173); balance: 15 Sep 1975 (see s. 2 and *Gazette* 5 Sep 1975 p. 3184)
Hire-Purchase Act Amendment Act 1974	5 of 1974	19 Sep 1974	Act other than s. 4-7: 19 Sep 1974 (see s. 2(1)); s. 4-7: 1 Apr 1975 (see s. 2(2) and (3) and *Gazette* 24 Jan 1975 p. 173)
Reprint of the *Hire-Purchase Act 1959* approved 3 Dec 1975 (includes amendments listed above)			
Hire-Purchase Act Amendment Act 1976	82 of 1976	21 Oct 1976	13 Dec 1976 (see s. 2 and *Gazette* 3 Dec 1976 p. 4835)
Hire-Purchase Amendment Act 1980	37 of 1980	5 Nov 1980	1 Jan 1981 (see s. 2 and *Gazette* 28 Nov 1980 p. 3998)
Hire-Purchase Amendment Act (No. 2) 1980	88 of 1980	9 Dec 1980	1 Feb 1981 (see s. 2 and *Gazette* 16 Jan 1981 p. 102)

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Short title	Number and year	Assent	Commencement
Reprint of the *Hire-Purchase Act 1959* approved 27 Oct 1981 (includes amendments listed above)			
Acts Amendment and Repeal (Credit) Act 1984 Pt. V	102 of 1984	19 Dec 1984	31 Mar 1985 (see s. 2 and *Gazette* 8 Mar 1985 p. 867)
Acts Amendment (Department for Community Services) Act 1984 Pt. VII	121 of 1984	19 Dec 1984	1 Jan 1985 (see s. 2 and *Gazette* 28 Dec 1984 p. 4197)
Acts Amendment (Consumer Affairs) Act 1985 Pt. IV (s. 18-23)	1 of 1985	8 Mar 1985	s. 18 and 20: 6 Apr 1983 (see s. 2(1)); s. 19 and 21-23: 8 Mar 1985 (see s. 2(3))
Reprint of the *Hire-Purchase Act 1959* as at 5 Feb 1986 (includes amendments listed above)			
Acts Amendment (Public Sector Management) Act 1994 s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and *Gazette* 30 Sep 1994 p. 4948)
Hire-Purchase Amendment Act 1995	43 of 1995	17 Oct 1995	17 Oct 1995 (see s. 2)
Sentencing (Consequential Provisions) Act 1995 s. 147	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and *Gazette* 25 Oct 1996 p. 5632)
Consumer Credit (Western Australia) Act 1996 s. 13	30 of 1996	10 Sep 1996	1 Nov 1996 (see s. 2)
Statutes (Repeals and Minor Amendments) Act 1997 s. 39(10) and 72	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
Reprint of the *Hire-Purchase Act 1959* as at 12 May 2000 (includes amendments listed above)			
Rail Freight System Act 2000 Pt. 5 Div. 3	13 of 2000	8 Jun 2000	30 Jun 2000 (see s. 2(1) and *Gazette* 30 Jun 2000 p. 3397)
Statutes (Repeals and Minor Amendments) Act 2000 s. 53	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)

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Short title	Number and year	Assent	Commencement
Acts Amendment and Repeal (Competition Policy) Act 2003 Pt. 9	70 of 2003	15 Dec 2003	1 May 2004 (see s. 2 and *Gazette* 20 Apr 2004 p. 1297)
Revenue Laws Amendment and Repeal Act 2004 s. 39	12 of 2004	29 Jun 2004	29 Jun 2004 (see s. 2(1))
Reprint 6: The *Hire-Purchase Act 1959* as at 2 Jul 2004 (includes amendments listed above)			
Children and Community Services Act 2004 ~~s. 251~~Sch. 2 cl. 13	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and *Gazette* 14 Feb 2006 p. 695)
Courts Legislation Amendment and Repeal Act 2004 s. 141 [~~4~~2]	59 of 2004 (as amended by No. 2 of 2008 s. 77(13))	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 61 [~~2~~3]	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))
Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 4 Div. 13 [~~3~~4]	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and *Gazette* 27 Jun 2006 p. 2347)
Reprint 7: The *Hire-Purchase Act 1959* as at 18 Aug 2006 (includes amendments listed above)			
Duties Legislation Amendment Act 2008 ~~s. 52~~ Sch. 1 cl. 15	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 74	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Acts Amendment (Bankruptcy) Act 2009 s. 42	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))

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Short title	Number and year	Assent	Commencement
Credit (Commonwealth Powers) (Transitional and Consequential Provisions) Act 2010 s. 11	14 of 2010	25 Jun 2010	1 Jul 2010 (see s. 2(b) and *Gazette* 30 Jun 2010 p. 3185)
Standardisation of Formatting Act 2010 s. 19 and 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341)
Acts Amendment (Fair Trading) Act 2010 s. 187	58 of 2010	8 Dec 2010	1 Jan 2011 (see s. 2(c) and *Gazette* 24 Dec 2010 p. 6805~~);~~)

Reprint 8: The *Hire-Purchase Act 1959* as at 18 Feb 2011 (includes amendments listed above)

~~2~~2 The *Courts Legislation Amendment and Repeal Act 2004* Sch. 2 cl. 24 was deleted by the *Criminal Law and Evidence Amendment Act 2008* s. 77(13).

3 The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

~~3~~4 The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 4 Div. 23 (other than s. 151) (as amended by *Acts Amendment (Fair Trading) Act 2010* s. 184) reads as follows:

"

Division 23 — Transitional provisions

*[**151.** Deleted by No. 58 of 2010 s. 184.]*

152. Commissioner for Corporate Affairs and Registrar of Co-operative and Financial Institutions

(1) A thing done or omitted to be done by, to or in relation to, the Commissioner for Corporate Affairs before commencement under, or for the purposes of, the *Companies (Co-operative) Act 1943* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.

(2) A thing done or omitted to be done by, to or in relation to, the Registrar of Co-operative and Financial Institutions before commencement under, or for the purposes of, the *Co-operative and Provident Societies Act 1903* has the same effect after commencement as if it had been done or omitted by, to or in

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relation to, the Registrar as defined in that Act as in force after commencement.

153. ***Consumer Affairs Act 1971***

Each office in existence immediately before commencement because of section 15(1) of the *Consumer Affairs Act 1971* does not cease merely because that subsection is repealed by this Act.

154. ***Petroleum Products Pricing Act 1983***

Each office in existence immediately before commencement because of section 5(2)(b) of the *Petroleum Products Pricing Act 1983* does not cease merely because that paragraph is deleted by this Act.

155. **Interpretation**

In this Division —

commencement means the time at which this Division comes into operation;

Commissioner for Fair Trading means the Commissioner for Fair Trading referred to in section 15 of the *Consumer Affairs Act 1971* as in force before commencement;

Prices Commissioner means the Prices Commissioner referred to in section 5(1) of the *Petroleum Products Pricing Act 1983* as in force before commencement.

”.

[4] ~~The *Courts Legislation Amendment and Repeal Act 2004* Sch. 2 cl. 24 was repealed by the *Criminal Law and Evidence Amendment Act 2008* s. 77(13).~~

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