

HIRE-PURCHASE.

8° Elizabeth II., No. LVIII.

No. 58 of 1959.¹

(Affected by Act No. 113 of 1965.)

[As amended by Act:

No. 107 of 1973,² assented to 4th January, 1974.

No. 5 of 1974,³ assented to 19th September, 1974,
and reprinted pursuant to the Amendments Incorporation
Act, 1938.]

AN ACT to consolidate and amend the Law relating to Hire-Purchase.

[Assented to 3rd December, 1959.]

BE it enacted—

PART I.—PRELIMINARY.

1. (1) This Act may be cited as the *Hire-Purchase Act, 1959-1974*.

Short title,
commence-
ment and
division into
Parts.

Amended by
No. 107 of
1973, s. 3;
No. 5 of
1974, s. 1.

¹ Came into operation on 31st March, 1960. See *Gazette* 26/2/60, p. 475.

² Sections 1, 2, 3 (except paragraph (a)); section 4 (except—(i) subparagraphs (ii), (iii), (iv) and (v) of paragraph (a), (ii) the provision in subparagraph (vii) of paragraph (a) in respect of the interpretation “Local Court”, and (iii) paragraph (b)); and sections 19 and 28 came into operation on 1st April, 1975; see *Gazette* 24/1/75, p. 173. The remaining provisions came into operation on 15th September, 1975; see *Gazette* 5/9/75, p. 3184.

³ Sections 4-6 came into operation on same date as s. 28 of Act No. 107 of 1973, i.e. 1st April, 1975; see *Gazette* 24/1/75, p. 173. The remaining provisions operated from date of Assent.

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

(3) This Act is divided into Parts as follows—

PART I.—PRELIMINARY, ss. 1, 2.

PART II.—FORMATION AND CONTENTS OF HIRE-PURCHASE AGREEMENTS, ss. 3, 4.

PART III.—PROTECTION OF HIRERS, ss. 5-17.

Division 1.—Warranties and Conditions, ss. 5, 6.

Division 2.—Statutory Rights of Hirers, ss. 7-10.

Division 3.—Early Completion of Agreements, s. 11.

Division 4.—Voluntary Return of Goods, s. 12.

Division 5.—Repossessions, ss. 12A-17.

PART IV.—GUARANTEES, ss. 18, 19.

PART V.—INSURANCE, ss. 20-23.

PART VA.—CONTROL OF HIRE-PURCHASE CREDIT PROVIDERS, ss. 23A-23V.

Division 1.—Hire-Purchase Licensing Tribunal, ss. 23A-23J.

Division 2.—Licensing of Hire-Purchase Credit Providers, ss. 23K-23P.

Division 3.—Powers of Investigation and Enquiry, ss. 23Q-23S.

Division 4.—Conduct of Business of Hire-Purchase Credit Providers, ss. 23T-23V.

PART VI.—MISCELLANEOUS, ss. 24-40A.

Operation
of Act.

(4) This Act applies to and in relation to all hire-purchase agreements and agreements made in relation to hire-purchase agreements entered into at any time on or after the date of the coming into operation of this Act.

Repeal and
savings.

(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.

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

Interpreta-
tion.
Amended by
No. 107 of
1973, s. 4.

“cash” includes a cheque drawn on a banker;

“Commissioner” means the Commissioner for Consumer Protection appointed under section fifteen of the Consumer Protection Act, 1971;

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

“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;

(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;

- (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 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;

“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;

“licence” means licence of a credit provider under this Act;

“Local Court” means a Local Court established under the Local Courts Act, 1904;

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

“Registrar” means the Registrar of the Tribunal under this Act;

“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 the amount of interest attributable to the period of complete months which at the relevant time is still to go under the agreement;
- (b) in relation to insurance, means the sum of—
- (i) the total amount of premium paid in respect of any annual period which at the relevant time has not yet commenced; and
 - (ii) ninety per centum of the proportion of the amount of the premium for insurance in respect of the current annual period attributable to the unexpired portion of that period consisting of whole months; and
- (c) in relation to maintenance, means the amount derived by multiplying the amount charged for maintenance by the number of complete months in the period of the agreement 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;

“Tribunal” means the Hire-Purchase Licensing Tribunal constituted under this Act;

“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;
- (b) the return of goods to the owner after notice has been served pursuant to the provisions of subsection (1) of section thirteen of this Act; and
- (c) except in section twelve A and in subsections (1) and (2) of section thirteen, the taking possession by the owner as a result of the voluntary return of the goods by the hirer under section twelve of this Act.

(3) Where, by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods or the property in the

goods will or may pass to the bailee, the agreements shall, for the purposes of this Act, be treated as a single hire-purchase agreement made at the time when the last agreement was made.

PART II.—FORMATION AND CONTENTS OF
HIRE-PURCHASE AGREEMENTS.

Summary of
proposed
hire-pur-
chase
transaction
to be given
to prospec-
tive hirer.
Amended by
No. 113 of
1965, s. 8;
No. 107 of
1973, s. 5.

3. (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 Part of the First Schedule, 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.

Form and
contents of
hire-pur-
chase
agreements.

(2) Every hire-purchase agreement—

- (a) shall be in writing;
- (b) shall be signed by or on behalf of the hirer and all other parties to the agreement;
- (c) shall—
 - (i) specify a date on which the hiring shall be deemed to have commenced;
 - (ii) specify the number of instalments to be paid under the agreement by the hirer;
 - (iii) specify the 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;
 - (iv) specify the time for the payment of each instalment; and
 - (v) contain a description of the goods sufficient to identify them;

- (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;
- (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”);
 - (ii) the amount paid or provided by way of deposit (in this Act called and in the agreement to be described as “deposit”) showing separately the amount paid in money and the amount provided by a consideration other than money;
 - (iii) any amount included in the total amount payable for maintenance of the goods (in this Act called and in the agreement to be described as “maintenance”);
 - (iv) any amount included in the total amount payable to cover the expenses of delivering the goods or any of them to or to the order of the hirer (in the agreement to be described as “freight”).
 - (v) any amount included in the total amount payable to cover vehicle registration fees (in the agreement to be called “vehicle registration fees”).
 - (vi) any amount included in the total amount payable for insurance other than third party insurance (in this Act called and in the agreement to be described as “insurance”);

- (vii) 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 the agreement to be called "agreement registration fees");
 - (viii) the total of the amounts referred to in subparagraphs (i), (iii), (iv), (v), (vi) and (vii) of this paragraph less the deposit (in this Act called and in the agreement to be described as "amount financed");
 - (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;
 - (x) the total of the amounts referred to in subparagraphs (viii) and (ix) of this paragraph (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) of this section commits an offence against this Act.

(4) Without affecting the liability of any person to be convicted of an offence against this section, where a provision of this section is not complied with in relation to a hire-purchase agreement (not being a failure to comply with paragraph (a) of subsection (2) of this section), 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.

(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 Second Part of the First Schedule 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) of this section 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 subparagraph (iii) of paragraph (c) and of paragraph (e) of subsection (2) of this section 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:

Provided that in each case—

- (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) of this section an amount or a cash price is approximate if it is within ten per centum of the true amount or price or within twenty dollars thereof.

Certain copy documents to be served on hirer.

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

Second Schedule.

- (a) a copy of the agreement in writing;
- (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.

PART III.—PROTECTION OF HIRERS.

Division 1.—Warranties and Conditions.

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

5. (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,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) of this section.

(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.

As to the liability of the owner and the dealer for misrepresentation. Amended by No. 107 of 1973, s. 6.

6. (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 entering into of a hire-purchase agreement shall confer on the hirer—

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

(2) 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.

Division 2.—Statutory Rights of Hirers.

7. (1) At any time before the final payment has been made under a hire-purchase agreement the owner shall, within fourteen days after he has received a request in writing from the hirer 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—

Hirer to be entitled to copy of agreement and statement of his present position.
Amended by No. 107 of 1973, s. 7.

- (a) the amount paid to the owner by or on behalf of the hirer;
- (b) the amount which has become due under the agreement but remains unpaid; and
- (c) the amount that is to become payable under the agreement,

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 a statement within the period of three months immediately preceding the receipt of the request.

(2) If an owner contravenes subsection (1) of this section 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 five hundred dollars and, until the default is remedied—

(a) the owner is not entitled to enforce—

(i) the agreement against the hirer;

(ii) any right to recover the goods from the hirer; or

(iii) any contract of guarantee relating to the agreement; and

(b) any security given by the hirer in respect of money payable under the agreement or given by a guarantor is not enforceable against the hirer or the guarantor by any holder thereof.

As to appropriation of payments when more than one agreement.

8. A hirer who is liable to make payments in respect of two 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 two 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.

As to assignments of rights under hire-purchase agreements. Amended by No. 107 of 1973, s. 8.

9. (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) of this section, 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 a Local Court for an order declaring that the consent of the owner to that assignment has unreasonably been withheld, 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 a 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.

Power to court to allow goods to be removed.
Amended by No. 107 of 1973, s. 9.

10. 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, a Local Court may, on the application of the hirer, make an order approving the removal of the goods to some other place, which place shall thereafter, for the purposes of the agreement, be substituted for the firstmentioned place.

Division 3.—Early Completion of Agreements.

Hirer to be entitled to finalise agreement at any time.

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

(2) For the purposes of this section the net balance due 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;
- (b) if the hirer requires any contract for insurance to be cancelled, the statutory rebate for insurance; and
- (c) if the hirer requires any contract for maintenance to be cancelled, the statutory rebate for maintenance.

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

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

Division 4.—Voluntary Return of Goods.

12. (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.

Power to
hirer to
determine
hiring.
Amended by
No. 107 of
1973, s. 10.

(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 a Local Court for an order fixing the place to which the goods may be returned under paragraph (b) of subsection (2) of this section.

(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 twenty-four hours before the application is to be heard.

(6) Division 5 of this Part, except section twelve A and subsections (1) and (2) of section thirteen, 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.

Division 5.—Repossessions.

Protected
goods.
Added by
No. 107 of
1973, s. 11.

12A. (1) Where a hire-purchase agreement has not been terminated by the hirer and—

- (a) seventy-five per cent. 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

- (ii) commit, or attempt to commit, an offence under section thirty-three or thirty-four of this Act; and
- (c) the right, title, and interest of the hirer under the agreement is not assigned other than in accordance with section nine of this Act,

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) of this section, the owner may apply to a Local Court for an order declaring that the failure or refusal of the Commissioner to give his consent was unreasonable in the circumstances of the case, and where an order is made that consent shall be deemed to have been given.

(3) There is no appeal against a decision of a Local Court under this section.

13. (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 seven days after the service of the notice) has expired.

Notices
to be given
to hirer
when goods
re-possessioned.
Amended by
No. 107 of
1973, s. 12.

(2) An owner is not obliged to comply with section twelve A or subsection (1) of this section if there are reasonable grounds for believing that the goods comprised in the hire-purchase agree-

ment 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 twenty-one days after the owner has taken possession of goods that were comprised in a hire-purchase agreement he shall serve 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) of this section 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.

Owner to retain possession of goods re-possessed for twenty-one days.
Amended by No. 107 of 1973, s. 13.

14. 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 fifteen of this Act, sell or dispose of the goods or part with possession thereof until after the expiration of twenty-one days from the date of the service on the hirer of the notice referred to in subsection (3) of section thirteen of this Act or, if notice under subparagraph (i) of paragraph (a) of subsection (1) of section fifteen of this Act has been given, until the time for payment or tender pursuant to that notice has expired (whichever is the later).

As to hirer's rights and immunities when goods re-possessed.
Amended by No. 107 of 1973, s. 14.

15. (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 twenty-one days of the service on him of the notice referred to in subsection (3) of section

thirteen of this Act, by giving to the owner a notice in writing signed by the hirer or his agent—

- (i) require the owner to re-deliver to or to the order of the hirer (subject to compliance by the hirer with the provisions of section sixteen of this Act) the goods which have been re-possessed; or
 - (ii) require the owner to sell the goods to any person introduced by the hirer who is prepared to purchase the goods for cash at a price not less than the estimated value of the goods set out in the first-mentioned notice;
- (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.

(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;
 - (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 subsection (3) of section thirteen, no amount is recoverable by the hirer under this section unless—

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

(i) setting out the amount claimed under the provisions of this section and the amount 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 seven days and, except where the goods have been sold at the request of the hirer to a person introduced by the hirer, not later than three months after the giving by the hirer to the owner of the notice referred to in paragraph (a) of this subsection.

(5) If, before any proceedings mentioned in paragraph (b) of subsection (4) of this section 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.

Power to
hirer to
regain
possession
of goods in
certain
circum-
stances.

Amended by
No. 107 of
1973, s. 15.

16. (1) If, within fourteen days after giving notice to the owner pursuant to the provisions of paragraph (a) of subsection (1) of section fifteen of this Act, 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;
- (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) of this section 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 fourteen days or within the time specified in the notice (whichever is the longer) after receiving the notice to remedy the breach.

(3) For the purposes of paragraph (a) of subsection (1) of this section, 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.

17. 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 fifteen of this Act.

Power to court to vary existing judgments or orders when goods are re-possessed.

PART IV.—GUARANTEES.

18. (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.

Provisions as to guarantors. Amended by No. 107 of 1973, s. 16.

(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 nineteen of this Act, 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) of this section, no moneys shall be recovered by the guarantor in excess of the moneys actually paid by him in accordance with his guarantee.

(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

subsection (1) of section three of this Act, 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 twenty-one 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 four of this Act 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 three and four of this Act;
 - (ii) the owner shall, before the contract of guarantee is entered into, give or cause to be given to the prospective guarantor a statement in writing signed by the owner or his agent showing current details of the matters referred to in paragraphs (a), (b), and (c) of subsection (1) of section seven of this Act; and
 - (iii) if the prospective guarantor becomes a guarantor, the owner shall serve or cause to be served on the guarantor within twenty-one 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 nineteen of this Act.

(7) At any time before the final payment has been made under a hire-purchase agreement the owner shall, within fourteen days after he has received a request in writing from 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 three months immediately preceding the receipt of the request.

(8) If an owner contravenes subsection (7) of this section he commits an offence against this Act and is liable to a penalty of one hundred dollars 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 eighteen years, only—

- (a) a parent or legal guardian of the hirer;
- (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 Director of the Department for Community Welfare appointed under the Community Welfare Act, 1972,

can act as guarantor of the hirer.

(10) Subsections (2), (3), (5) and (6) of section twenty-five of the Guardianship of Children Act, 1972, apply, with such modifications as are necessary, to and in relation to the power of approval conferred by subsection (9) of this section on the Director of the Department for Community Welfare and to and in relation to persons and matters affected thereby as if that power of approval was a power conferred by section twenty-five of the Guardianship of Children Act, 1972.

19. (1) Where a guarantor enters into an agreement binding the guarantor—

Guarantor
not to be
bound in
certain cases
unless in-
dependently
advised.
Amended by
No. 107 of
1973, s. 17.

- (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;
- (b) to perform an obligation in respect of goods other than the goods comprised in a hire-purchase agreement;
- (c) to permit the owner under a hire-purchase agreement or any person acting on behalf of the owner to enter upon any premises for the purpose of taking possession of or inspecting goods 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,

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) of this section unless—

- (a) he has read over and explained the agreement to the guarantor or has caused the agreement to be read over and explained to the guarantor in his presence;

- (b) he has examined the guarantor touching his knowledge of the agreement;
- (c) he is satisfied that the guarantor understands the true purport and effect of the agreement; and
- (d) the guarantor has freely and voluntarily executed the agreement in his presence.

(3) Failure by a solicitor to comply with subsection (2) of this section in respect of a certificate does not invalidate the certificate.

PART V.—INSURANCE.

As to insurance of goods comprised in hire-purchase agreements. Amended by No. 107 of 1973, s. 18.

20. (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 twenty 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) of this section.

(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.

Hirer to be entitled to insurance rebates.

(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
- (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 twenty per centum 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.

21. (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) of this section, order that the failure be excused.

Powers of court in relation to insurance contracts associated with hire-purchase agreements.

(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) of this section, apply to the court for an order that the failure to observe a term or condition of the contract of insurance be excused; and if it appears to the court that the failure may reasonably be excused on the ground that the insurer was not prejudiced by the failure the court may order that the failure be excused.

(3) Where an order is made under subsection (1) or subsection (2) of this section, 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.

As to
contents of
contracts of
insurance.

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

- (a) identify the goods or the part of the goods to be insured;
- (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) of this section, any provision in any agreement or other document—

- (a) requiring differences or disputes arising out of a contract of insurance to be referred to arbitration;
- (b) providing that no action or suit 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;
- (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 insurance to submit that difference or dispute to arbitration has effect as if subsection (2) of this section had not been enacted.

23. (1) The provisions of sections twenty-one and twenty-two of this Act 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.

Application
of Part V.

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

PART VA.—CONTROL OF HIRE-PURCHASE
CREDIT PROVIDERS.

Part VA.
Added by
No. 107 of
1973, s. 19.

Division 1.—Hire-Purchase Licensing Tribunal.

23A. (1) There shall be a Tribunal entitled the Hire-Purchase Licensing Tribunal.

Establish-
ment of the
Tribunal.
Added by
No. 107 of
1973, s. 19.

(2) The Tribunal shall be constituted solely by such District Court Judge, appointed under the District Court of Western Australia Act, 1969, as is from time to time nominated to be the Tribunal by the Chairman of Judges appointed under that Act.

23B. No liability shall attach to a District Court Judge for any act or omission by him, in good faith and in the exercise or purported exercise of the powers and functions of the Tribunal, or in the discharge or purported discharge of the duties of the Tribunal, under this Act.

Tribunal
exempt
from
liability.
Added by
No. 107 of
1973, s. 19.

23C. (1) The Tribunal shall give to any person who is a party to proceedings instituted before the Tribunal reasonable notice of the time and place at which it intends to hear those proceedings, and

Proceedings
before the
Tribunal.
Added by
No. 107 of
1973, s. 19.

shall afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.

(2) If a person to whom notice has been given pursuant to subsection (1) of this section does not attend at the time and place fixed by the notice, the Tribunal may hear the proceedings in his absence.

(3) The Tribunal may appoint a person with such qualifications as it thinks fit to appear in proceedings before the Tribunal to assist the Tribunal.

(4) The Commissioner may appear in any proceedings before the Tribunal.

(5) The Commissioner or any party to proceedings before the Tribunal shall be entitled to appear personally or by counsel.

(6) The Commissioner, or any party to proceedings before the Tribunal, may, by leave of the Tribunal, be represented before the Tribunal by a person other than a certificated legal practitioner within the meaning of the Legal Practitioners Act, 1893.

(7) A person, other than such a legal practitioner, shall not demand or receive any fee or reward for representing a party to proceedings before the Tribunal.

Penalty: Five hundred dollars.

(8) Where the Tribunal is satisfied that for the purpose of protecting the business or interest of any person it is desirable that the proceedings or any part thereof be heard in camera, the Tribunal may make an order to that effect and may include in the order conditions relating to that purpose, and, if such an order is made, the proceedings shall be conducted in accordance with it.

23D. (1) In the exercise of its powers and functions under this Act, the Tribunal may—

Powers
of the
Tribunal.
Added by
No. 107 of
1973, s. 19.

- (a) by summons signed on behalf of the Tribunal by the Registrar, require the attendance before the Tribunal of any person;
- (b) by summons signed on behalf of the Tribunal by the Registrar, require the production of any books papers or documents;
- (c) inspect any books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;
- (d) require any person to make oath or affirmation that he will truly answer all questions put to him by the Tribunal relating to any matter being inquired into by the Tribunal (which oath or affirmation may be administered by the Tribunal or any officer of the Tribunal); or
- (e) require any person appearing before the Tribunal, including the person whose conduct is subject to an inquiry, (whether he has been summoned to appear or not) to answer any relevant questions put to him by the Tribunal, or by any other person appearing before the Tribunal.

(2) Subject to subsection (3) of this section, if any person—

- (a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse (proof of which shall lie upon him) to attend in obedience to the summons;
- (b) who has been served with a summons to produce any books, papers or documents, fails without reasonable excuse (proof of which shall lie upon him) to comply with the summons;
- (c) misbehaves himself before the Tribunal, wilfully insults the Tribunal, or interrupts the proceedings of the Tribunal; or

- (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Tribunal,

he is guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(3) A person shall not be obliged to answer a question put to him under this section if the answer to that question would tend to incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

(4) In the course of any proceedings, the Tribunal may—

- (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact therefrom that it considers proper; or
- (b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court that may be relevant to the proceedings.

(5) In any proceedings the Tribunal shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms and, subject to subsection (6) of this section, it shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

(6) The Tribunal shall be bound by the rules of evidence in proceedings by way of an inquiry under Division 3 of this Part.

Orders for
fines or
costs.
Added by
No. 107 of
1973, s. 19.
Amended by
No. 5 of
1974, s. 4.

23E. (1) The Tribunal may, upon the determination of any proceedings, make such orders for costs as the Tribunal considers just and reasonable.

(2) Where the Tribunal makes an order for the payment of a fine or costs against a person licensed under this Act, and the fine or costs is not, or are not, paid within the time fixed by the Tribunal, the Tribunal may suspend the licence of that person until the fine or costs is or are paid, or for such period as the Tribunal thinks fit.

(3) The power conferred on the Tribunal by subsection (2) of this section is in addition to and not in derogation of the powers conferred on the Tribunal by section twenty-three S of this Act.

23F. The Tribunal may, and, on request by any party to the proceedings, shall, give to the parties reasons for its decision.

Reasons for decision of Tribunal to be given.
Added by No. 107 of 1973, s. 19.

23G. (1) The Tribunal may state a case upon any question of law for the opinion of the Supreme Court.

Case stated.
Added by No. 107 of 1973, s. 19.

(2) Any such case stated by the Tribunal shall be heard and determined by the Full Court.

23H. (1) Any person aggrieved by a decision or order of the Tribunal in proceedings to which the person was a party shall, subject to this section, be entitled to appeal to the Supreme Court against the decision or order of the Tribunal.

Appeal.
Added by No. 107 of 1973, s. 19.

(2) The appeal shall be instituted within one month of the making of the decision or order appealed against, but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal shall be so instituted.

(3) The Supreme Court may, on the hearing of the appeal, do one or more of the following, according to the nature of the case—

- (a) affirm, vary or quash the decision or order appealed against, or substitute, and make in addition, any decision or order that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Tribunal for further hearing or consideration or for re-hearing;
- (c) make any further or other order as to costs or any other matter that the case requires.

(4) Any such appeal shall be heard and determined by the Full Court.

Operation
of order
may be
suspended.
Added by
No. 107 of
1973, s. 19.

23 I. (1) Where an order has been made by the Tribunal, and the Tribunal, or the Supreme Court, is satisfied that an appeal against the order has been instituted, it may suspend the operation of the order until the determination of the appeal.

(2) Where the Tribunal has suspended the operation of an order under subsection (1) of this section, the Tribunal may terminate the suspension, and where the Supreme Court has suspended the operation of an order under subsection (1) of this section, the Supreme Court may terminate the suspension.

The
Registrar
and other
officers.
Added by
No. 107 of
1973, s. 19.

23J. (1) There shall be a Registrar of the Tribunal and there shall be such other officers of the Tribunal as is necessary for its proper functioning.

(2) The Registrar and other officers shall be appointed and shall hold office subject to and in accordance with the Public Service Act, 1904.

(3) The Registrar and other officers of the Tribunal may hold office as such in conjunction with any other office in the Public Service of the State.

Division 2.—Licensing of Hire-Purchase Credit Providers.

Obligation
to be
licensed.
Added by
No. 107 of
1973, s. 19.
Amended by
No. 5 of
1974, s. 5.

23K. (1) On and after the appointed day a person shall not carry on business as a hire-purchase credit provider or hold himself out as carrying on business as such a credit provider unless he is duly licensed as such under this Act.

Penalty: Five thousand dollars.

(2) For the purposes of this section, a person acts as, or holds himself out as being, a credit provider whether he does so personally or through the agency or instrumentality of other persons.

(3) A credit provider who is required to be licensed under this Act shall not be entitled to recover or retain any terms charge by reason of becoming an owner at any time at which he is unlicensed.

(4) In this section "appointed day" means such day as is fixed by the Minister by notice published in the *Government Gazette* to be the appointed day for the purposes of this section.

23L. (1) An application for a licence shall be made to the Tribunal in writing and in the prescribed manner and form and shall contain the prescribed information.

Application.
Added by
No. 107 of
1973, s. 19.

(2) Notice of the application shall be advertised in accordance with the regulations.

(3) The information contained in the application shall be verified by statutory declaration made by the applicant or, where the applicant is a corporation, by an officer of the corporation.

(4) The applicant shall furnish the Tribunal with such further information, verified, if the Tribunal so requires, by statutory declaration, as the Tribunal may require.

23M. (1) Subject to this Act, a person (not being a body corporate) is entitled to be licensed as a credit provider if he has proved to the satisfaction of the Tribunal that—

Entitle-
ment to be
granted a
licence.
Added by
No. 107 of
1973, s. 19.

- (a) he is over the age of eighteen years;
- (b) he is a fit and proper person to hold a licence; and
- (c) he has sufficient financial resources to carry on business in a proper manner under the licence.

(2) Subject to this Act, a body corporate is entitled to be licensed as a credit provider if it has proved to the satisfaction of the Tribunal that—

- (a) the officers of the body corporate, and any other person who is, in the opinion of the Tribunal, in a position to control or influence substantially the affairs of the body corporate, are fit and proper persons

to manage, direct or control the affairs of a body corporate holding a licence under this Act; and

- (b) the body corporate has sufficient financial resources to carry on business in a proper manner under the licence.

(3) Where an applicant duly applies for a licence, and pays the prescribed fee and the applicant is entitled to be licensed in accordance with this section, the Tribunal shall grant a licence to the applicant.

Renewal of
licence.
Added by
No. 107 of
1973, s. 19.
Amended by
No. 5 of
1974, s. 6.

23N. (1) A licence shall, subject to this Act, remain in force until the thirtieth day of June next ensuing after the grant of the licence, and may from time to time be renewed for successive periods of twelve months expiring on the thirtieth day of June, but where, in respect of a new licence, the next ensuing thirtieth day of June is less than six months after the grant of the licence, the Tribunal may, if it thinks fit, grant the licence for a period expiring twelve months later than that day.

(2) An application for the renewal of a licence shall be made in the prescribed form and shall be accompanied by such statutory declarations and other documents as may be prescribed or as the Tribunal may require.

(3) The application shall be delivered to the Registrar not earlier than the first day of April, and not later than the last day of May preceding the expiry of the licence, but the Tribunal may, if it thinks fit, determine an application notwithstanding that it is delivered out of time.

(4) Where the holder of a licence duly applies for the renewal of a licence, and pays the prescribed fee, the licence shall be renewed for a term of twelve months in accordance with this section if the Tribunal is satisfied that the holder still meets the requirements of paragraphs (b) and (c) of subsection (1) of section twenty-three M of this Act or of paragraphs (a) and (b) of subsection (2) of that section, as the case requires.

23O. The holder of a licence may at any time, with the consent of the Tribunal, surrender his licence, and the licence shall thereupon cease to have any effect.

Surrender of licence.
Added by
No. 107 of
1973, s. 19.

23P. A licence is not transferable.

Licence not transferable.
Added by
No. 107 of
1973, s. 19.

Division 3.—Powers of Investigation and Inquiry.

23Q. The Commissioner may, of his own motion, and shall at the direction of the Tribunal, make any investigation that he, or the Tribunal, considers necessary or expedient for the purpose of determining any application, or any other matter before the Tribunal.

The Commissioner's powers of investigation.
Added by
No. 107 of
1973, s. 19.

23R. (1) The Commissioner of Police shall, at the request of the Commissioner, cause his officers to make an investigation and report relating to any matter being investigated by the Commissioner.

Investigations by the Commissioner of Police.
Added by
No. 107 of
1973, s. 19.

(2) The report shall be forwarded to the Commissioner.

23S. (1) The Tribunal may, upon the application of the Commissioner or any other person, or of its own motion, inquire into the conduct of any person licensed under this Act.

Inquiries.
Added by
No. 107 of
1973, s. 19.

(2) If, after conducting an inquiry under subsection (1) of this section, the Tribunal is satisfied that proper cause exists for disciplinary action, the Tribunal may do any one or more of the following—

- (a) reprimand the person in relation to whom the inquiry was held;
- (b) impose a fine not exceeding ten thousand dollars on that person; and
- (c) suspend or cancel the licence and, in addition, disqualify the person who held the licence either temporarily or permanently, or until the fulfilment of any condition which may be imposed by the Tribunal, or until the further order of the Tribunal, from holding a licence under this Act.

(3) There shall be proper cause for disciplinary action if—

- (a) the licence was improperly obtained;
- (b) the credit provider, or any person acting with the authority or upon the instructions, of the credit provider has, in the course of any dealings with a hirer or guarantor or a prospective hirer or guarantor, been guilty of conduct that constitutes a breach of any law and that prejudices or may prejudice any rights or interests of the hirer or guarantor or the prospective hirer or guarantor;
- (c) the credit provider has insufficient financial resources properly to carry on business as a credit provider; or
- (d) any other cause exists that, in the opinion of the Tribunal, renders the credit provider unfit to hold a licence.

*Division 4.—Conduct of Business of Hire-Purchase
Credit Providers.*

Authorised
address.
Added by
No. 107 of
1973, s. 19.

23T. (1) A licence shall specify an address within the State which shall be the registered address of the licensed credit provider for the purposes of this Act.

(2) The Tribunal may, at any time, on the application of a licensed credit provider alter his registered address.

(3) A licensed credit provider shall at least seven days before he commences to carry on business at any address (other than his registered address) send to the Registrar a notice in writing informing him that he proposes to carry on business at that address.

Penalty: Five hundred dollars.

(4) A licensed credit provider shall, not more than seven days after he ceases to carry on business at any address (other than his registered address), give notice in writing to the Registrar of the fact that he has ceased to carry on business at that address.

Penalty: Five hundred dollars.

(5) The registered address of a credit provider and any other address of which the credit provider has given notice under this section (not being an address in relation to which the credit provider has given a notice of cessation of business under subsection (4) of this section) is an authorised address for the purposes of this Act.

(6) A credit provider shall not invite the public to deal with him other than at such an authorised address.

Penalty: Five hundred dollars.

23U. A licensed credit provider shall not carry on business as a credit provider otherwise than in the name in which he is licensed.

Penalty: Five hundred dollars.

Name in which a licensed credit provider is to carry on business. Added by No. 107 of 1973, s. 19.

23V. (1) Where a body corporate holds a licence—

(a) the business of the body corporate conducted in pursuance of that licence in this State shall be managed under the personal supervision of a natural person, approved by the Tribunal; and

(b) if the body corporate has more than one authorised address for the purposes of this Act, the Tribunal, if it considers the circumstances warrant it, may require that such business at all or any of those addresses shall be respectively managed under the personal supervision of such natural persons as are approved by the Tribunal.

Corporation must employ licensed person as manager. Added by No. 107 of 1973, s. 19.

(2) Where the business of a body corporate is not managed as required by subsection (1) of this section, the body corporate shall, within twenty-one days, or such longer period as may be allowed by the Tribunal, appoint a manager or, if so required by the Tribunal, managers approved by the Tribunal, to have the personal supervision of the business of the body corporate conducted in pursuance of the licence.

(3) A body corporate shall be deemed to be unlicensed for the duration of any period for which the body corporate is in default under the provisions of subsection (2) of this section.

PART VI.—MISCELLANEOUS.

Power to
court to
re-open
certain hire-
purchase
transactions.
Amended by
No. 107 of
1973, s. 20.

24. (1) In any proceedings under this Act or arising out of a hire-purchase agreement or instituted pursuant to subsection (4) of this section 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 re-open the transaction and take an account between the parties thereto.

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

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

(3) Where it appears to the court by which a transaction is re-opened under this section that any person other than the owner has shared in the profits of or has any beneficial interest prospectively or otherwise in the transaction which the court holds to be harsh and unconscionable the court may

add that person as a party to the 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 a Local 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) of this section notwithstanding that the time for the payment of any of the amounts payable under the agreement may not have arrived.

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

- (a) where the owner has taken possession of the goods comprised in the agreement—after the expiration of a period of four months from the time when the owner serves on the hirer the notice required by subsection (3) of section thirteen of this Act to be served on him; or
- (b) in any other case—after the expiration of a period of four months from the time when the transaction is closed.

25. (1) Where—

- (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,

Power of court to restrain re-possession of certain goods from farmer.
Amended by No. 107 of 1973, s. 21.

the period fixed by any notice of intention to take possession of the goods served under subsection (1) of section thirteen of this Act shall, notwithstanding the period specified in that subsection, be a period of not less than thirty days after the service of the notice.

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

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

(4) An order under subsection (3) of this section may include such terms and conditions, including conditions as to payment of instalments, as the court thinks fit.

(5) In this section, "farmer" means any person 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.

Liens.

26. (1) Subject to subsection (2) of this section, where a worker does work upon goods comprised in a hire-purchase agreement in such circumstances that, if the goods were the property of the hirer, the worker would be entitled to a lien on the goods for the value of his work, he is entitled to a lien notwithstanding that the goods are not the property of the hirer.

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

27. (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. Fixtures.

(2) Notwithstanding anything contained in subsection (1) of this section, the owner is not entitled to re-possess 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. (1) Any provision in any agreement or other document whereby— Avoidance
of certain
provisions.

- (a) any right conferred on the hirer by this Act to determine a hire-purchase agreement is excluded or restricted;
- (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;
- (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;
- (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 eight per centum per annum on a daily basis for the period for which it is due and not paid;

- (e) any person acting on behalf of the owner under a hire-purchase agreement in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement is to be treated as, or declared to be, the agent of the hirer;
- (f) the owner under a hire-purchase agreement is relieved from liability for the acts or defaults of any person acting in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement;
- (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;
- (h) the operation of a hire-purchase agreement is determined or modified or any person is authorised to repossess any goods comprised in a hire-purchase agreement if the hirer becomes bankrupt or commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement (whether all or any of these events are named); or
- (i) except as expressly provided by this Act the operation of any provision of this Act is excluded, modified, or restricted,

is void.

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

29. (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—

Restrictions
on payments
to owners
of goods by
financiers.

- (a) enter into a hire-purchase agreement in relation to those goods with a hirer;
- (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 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) of this section—

- (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.

Certain
transactions
prohibited.

30. 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), of this section on terms and conditions that, if the offer in writing to purchase the goods is accepted, will constitute a hire-purchase agreement, commits an offence against this Act.

As to
securities
collateral
to hire-
purchase
agreements.

31. 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. 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 one thousand dollars or to imprisonment for a term of three months.

False statements by dealers in proposals. Amended by No. 107 of 1973, s. 22.

33. The owner of any goods comprised in a hire-purchase agreement may at any time by notice in writing served on the hirer thereof require him to state in writing where the goods are, or, if the goods are not in his possession, to whom he delivered the goods or the circumstances in which he lost possession of them and any hirer who does not within fourteen 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.

Hirer may be required to state where goods are.

34. 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 four hundred dollars or to imprisonment for a period of three months.

Fraudulent sale or disposal of goods by hirer. Amended by No. 113 of 1965, s. 8.

35. 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 a Local 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.

Power to court to extend times. Amended by No. 107 of 1973, s. 23.

Power to court to order delivery of goods unlawfully detained. Amended by No. 107 of 1973, s. 24.

36. (1) Upon application made to a Local 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, it is claimed that the hirer or any person acting on behalf of the hirer has refused or failed to deliver up possession of the goods on the service of a notice of demand made by the owner or by an agent of the owner authorised in that behalf, 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.

Relief against consequences of breach. Added by No. 107 of 1973, s. 25.

36A. (1) Where by reason of sickness or unemployment 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;
- (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.

(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 three months from the date of granting the relief or, in exceptional circumstances, for a period of six 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 a Local Court under this section, a decision of the Commissioner 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, within the period of seven days from the date of service on him of the decision, apply to a Local Court for the decision to be varied or set aside.

(7) On an application to a Local Court under this section the court may by order confirm, vary, or set aside the decision of the Commissioner.

(8) There is no appeal against an order of a Local Court made under this section, and the order 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.

Advertisements.
Added by
No. 107 of
1973, s. 25.

36B. (1) In this section "advertisement" means any words, whether written, printed, or spoken, or any picture, drawing, or figure.

(2) Any advertisement to the effect that a credit provider is such, or is willing to become such, in respect of specific goods shall include the percentage rate of terms charges in relation thereto calculated in accordance with the formula provided in the Fifth Schedule.

(3) Where an advertisement contravenes subsection (2) of this section, the credit provider is, subject to subsection (4) of this section guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(4) It is a defence to a charge of an offence under subsection (3) of this section to prove that the advertisement was not authorised by the credit provider.

Application
of certain
provisions
of the
Consumer
Protection
Act 1971.
Added by
No. 107 of
1973, s. 25.

36C. Without limiting any of the provisions of sections nineteen to twenty-five, both inclusive, of the Consumer Protection Act, 1971, those sections apply, with such modifications as are necessary, to and in relation to the exercise of the functions, powers, and duties of the Commissioner under this Act and persons and matters affected thereby as if those sections made express provision to that effect. .

As to service
of notices.

37. (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;
- (b) by leaving it at his place of abode or business with some other person apparently an inmate thereof or employed thereat and apparently of or over the age of sixteen years; or
- (c) by posting it addressed to him at his last known place of abode or business.

(2) The affidavit or oral evidence of an owner or his servant or agent as to the delivery or posting of any notice or document required to be served by this Act 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.

Proof of
service.

38. (1) Any prescribed document or part thereof that

Size, etc., of
type, etc.,
required in
certain
documents.
Amended by
No. 107 of
1973, s. 26.

- (a) is in handwriting that is not clear and legible; or
- (b) is printed in type of a size smaller than ten-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;
- (b) any statement under subsection (1) of section three of this Act;
- (c) any copy of an agreement, notice, or statement required by section four of this Act to be served on a hirer;
- (d) any statement required by subsection (1) of section seven of this Act to be sent to a hirer;
- (e) any notice under subsection (1) or subsection (3) of section thirteen of this Act; and
- (f) any document, notice, or statement or copy thereof required by subsection (1) of section seven or by section eighteen of this Act to be given to, served on, or sent to a guarantor.

Penalty.
Amended by
No. 107 of
1973, s. 27.

39. (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 one thousand dollars.

Time for
commence-
ment of
prosecution.

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

Regulations.
Added by
No. 107 of
1973, s. 28.
Amended by
No. 5 of
1974, s. 7.

40A. (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) of this section, those regulations may—

- (a) prescribe the procedure of the Tribunal;
- (b) provide for the enforcement of judgments and orders of the Tribunal;
- (c) prescribe the manner in which applications for licences are to be made under this Act;
- (d) provide for the advertising of notices of applications for licences;
- (e) prescribe, and provide for the recovery of, any fee for the purposes of this Act;
- (f) prescribe a scale of costs for proceedings before the Tribunal;
- (g) provide for the keeping of a register of licensed credit providers by the Registrar; and
- (h) prescribe the matters to which the Commissioner shall have regard in considering applications for relief under section thirty-six A of this Act and exercising his powers thereunder.

(3) In respect of the grant or renewal of a licence, the regulations—

- (a) may fix maximum and minimum fees;
- (b) subject to any such maximum and minimum fees, may provide that—
 - (i) the fee shall be fixed by reference to the total of the amounts financed by the applicant under hire-purchase agreements, or the total number of hire-purchase agreements under which the applicant financed amounts, in a period prior to the grant or renewal; or
 - (ii) where the applicant was not a credit provider during that period or part of it, or does not produce information or produces insufficient information on his hire-purchase agreements in that period, the Tribunal shall fix the fee in such amount as it thinks proper and reasonable in the circumstances, and the amount so fixed shall be final and conclusive; and
- (c) may fix fees, additional to those referred to in paragraphs (a) and (b), for authorised addresses of the credit provider other than the registered address.

Hire-Purchase.

First
Schedule—
First Part.
Substituted
by No. 107 of
1973, s. 29.

S. 3 (1)

FIRST SCHEDULE—First Part.

Hire Purchase Act, 1959.

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.....

INSTALMENTS

(Insert here clearly the
commencing date, fre-
quency, and duration of
instalment payments)

To (Person and Address)

Being... Payments of.....

... Payments of.....

... Final
Payment of.....

	\$	c
CASH PRICE		
Less Deposit		
(a) Money		
(b) Other—		
Trade in		
allowance		
RESIDUE		
Add : Maintenance....		
„ Freight		
„ Vehicle Regis- tration Fees		
„ Insurance		
„ Agreement Reg- istration Fees		
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-PUR-
CHASE 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 PROS-
PECTIVE 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).

FIRST SCHEDULE—Second Part.

Chairs, tables, desks and bureaux, 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.

SECOND SCHEDULE.

Hire-Purchase Act, 1959.

ADVICE TO HIRERS.

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 three 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 three months;

S. 4.
S. 18.

Second
Schedule.
Substituted
by No. 107 of
1973, s. 29.

- (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.

S.13 (1)

THIRD SCHEDULE

Hire-Purchase Act, 1959.

NOTICE OF INTENTION TO REPOSSESS.

TAKE NOTICE that....., the owner of*.....hired by.....under an agreement (insert name of hirer) dated theday of19....., 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.....on or before.....19.....

Total amount payable \$.....

Amount paid or provided by hirer to/...../19..... \$.....

Arrears under agreement to/...../19..... \$.....

* Insert description of goods.

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

Third
Schedule
Substituted
by No. 107 of
1973, s. 29.

Hire-Purchase.

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FOURTH SCHEDULE.

Hire-Purchase Act, 1959.

ADVICE TO HIRERS.

Ss. 11 (3),
13 (3), 14,
15, 24 (6).
Fourth
Schedule.
Amended by
No. 107 of
1973, s. 29.

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

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

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

Arrears of instalments	\$.....
Cost of storage, repair or maintenance	\$.....
Cost of repossession	\$.....
Cost of redelivery ..	\$.....
Total ..	<u>\$.....</u>

—or—

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

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

Total amount payable under the agreement	\$.....
Less deposit and instal- ments paid	\$.....
Balance due under agree- ment	\$.....
Less statutory rebates	\$.....
Add costs of repossession	\$.....
Storage, repair or mainten- ance	\$.....
Total	<u>\$.....</u>

Hire-Purchase.

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., †

* Strike out whichever inapplicable.

† Insert owner's estimate of value.

DO NOT DELAY.

Action to enforce your rights should be taken at once. You will lose your rights *twenty-one days* after the service 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.

FIFTH SCHEDULE.

Hire-Purchase Act, 1959.

Fifth
Schedule.
Added by
No. 107 of
1973, s. 29.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.

(2) (a) 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) hereof may be calculated in accordance with the following formulae:—

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

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

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

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

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

"P" = the amount financed

"R" = the nominal annual percentage rate

(b) 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.