

## HIRE-PURCHASE.

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No. 107 of 1973.

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### AN ACT to amend the Hire-Purchase Act, 1959.

[Assented to 4th January, 1974.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Hire-Purchase Act Amendment Act, 1973*. Short title and citation.

(2) In this Act the Hire-Purchase Act, 1959 is referred to as the principal Act. Act No. 58 of 1959.

(3) The principal Act as amended by this Act may be cited as the Hire-Purchase Act, 1959-1973.

Commence-  
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Amendment  
to section 1.  
(Short title,  
commence-  
ment and  
division  
into Parts.)

3. Subsection (3) of section 1 of the principal Act is amended—

(a) by substituting for the number “13”, in the fourth last line, the expression “12A”;

(b) by adding under the passage “PART V.—INSURANCE, ss. 20-23.” a passage as follows—

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-Pur-  
chase 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. ; and*

(c) by substituting for the number “40”, in the last line, the expression “40A”.

Amendment  
to section 2.  
(Inter-  
pretation.)

4. Section 2 of the principal Act is amended—

(a) as to subsection (1)—

(i) by adding after the interpretation “cash” interpretations as follows—

“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; ;

- (ii) by deleting the interpretation “Court of Petty Sessions”;
- (iii) by adding before the interpretation “guarantor” an interpretation as follows—
  - “guarantee” includes an indemnity; ;
- (iv) by substituting for the interpretation “guarantor” an interpretation as follows—
  - “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; ;
- (v) by substituting for the interpretation “hire-purchase agreement” an interpretation as follows—
  - “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; ;
- (vi) by adding before the interpretation "hirer" an interpretation as follows—
- "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; ;
- (vii) by adding after the interpretation "hirer" interpretations as follows—
- "licence" means licence of a credit provider under this Act;
- "Local Court" means a Local Court established under the Local Courts Act, 1904; ;
- (viii) by adding before the interpretation "Schedule" an interpretation as follows—
- "Registrar" means the Registrar of the Tribunal under this Act; ; and
- (ix) by adding before the interpretation "vehicle registration fees" an interpretation as follows—
- "Tribunal" means the Hire-Purchase Licensing Tribunal constituted under this Act; ; and

- (b) by repealing and re-enacting subsection (2) as follows—

(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. .

Amendment  
to section 3.  
(Summary  
of proposed  
hire-  
purchase  
transaction  
to be given  
to prospec-  
tive hirer.)

5. Section 3 of the principal Act is amended—

- (a) by adding after the word “signed”, in the last line of subsection (1), the words “and a copy of the written offer was given to the prospective hirer immediately after it was so signed”;
- (b) by deleting the word “and” immediately after paragraph (d) of subsection (2); and
- (c) by substituting for paragraph (e) of subsection (2) a passage as follows—
  - (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. .

6. Subsection (1) of section 6 of the principal Act is repealed and re-enacted as follows—

- (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.

7. Section 7 of the principal Act is amended—

(a) as to subsection (1)—

- (i) by adding after the word “hirer”, in line four, the words “or a guarantor”;
- (ii) by substituting for the words “the hirer”, in line five, the word “him”;
- and
- (iii) by adding after the word “hirer”, in line fifteen, the passage “or guarantor, as the case may be,”;
- and

(b) by substituting for the words “fifty pounds”, in lines four and five of subsection (2), the words “five hundred dollars”.

Amendment  
to section 7  
(Hirer to be  
entitled to  
copy of  
agreement  
and state-  
ment of his  
present  
position.)

Amendment  
to section 9.  
(As to  
assignment  
of rights  
under hire-  
purchase  
agree-  
ments.)

8. Subsection (3) of section 9 of the principal Act is amended by substituting for the words "court of petty sessions", in line five, the words "Local Court".

Amendment  
to section  
10.  
(Power to  
Court to  
allow goods  
to be  
removed.)

9. Section 10 of the principal Act is amended by substituting for the words "court of petty sessions", in lines five and six, the words "Local Court".

Amendment  
to section  
12.  
(Power to  
hirer to  
determine  
hiring.)

10. Section 12 of the principal Act is amended—

(a) by substituting for the words "court of petty sessions", in lines two and three of subsection (3), the words "Local Court"; and

(b) by repealing and re-enacting subsection (6) as follows—

(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. .

Addition of  
section 12A.

11. The principal Act is amended by adding before section 13 a section as follows—

Protected  
goods.

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. .

12. Section 13 of the principal Act is amended—

- (a) by adding after the word “hirer”, in line six of subsection (1), the words “and every guarantor”; and
- (b) by adding after the word “with”, in line one of subsection (2), the passage “section twelve A or”.

Amendment to section 13.  
(Notices to be given to hirer when goods repossessed.)

13. Section 14 of the principal Act is amended by adding after the word “hirer”, in line three, the words “and every guarantor but subject to section fifteen of this Act”.

Amendment to section 14.  
(Owner to retain possession of goods repossessed for twenty-one days.)

Amendment  
to section  
15.  
(As to  
hirer's  
rights and  
immunities  
when goods  
repossessed.)

14. Section 15 of the principal Act is amended by adding at the end thereof a subsection as follows—

(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. .

Amendment  
to section  
16.  
(Power to  
hirer to  
regain  
possession  
of goods in  
certain  
circum-  
stances.)

15. Subsection (1) of section 16 of the principal Act is amended by substituting for the word "whether", in line two of paragraph (b), the word "where".

Amendment  
to section  
18.  
(Provisions  
as to  
guarantors.)

16. Section 18 of the principal Act is amended by adding at the end thereof subsections as follows—

(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.

17. Section 19 of the principal Act is amended—
- (a) by deleting the words “a clerk of petty sessions or”, in lines twenty-four and twenty-five of subsection (1);
- (b) by deleting the words “the clerk or”, in line twenty-six of subsection (1);
- (c) by substituting for the words “A clerk of petty sessions or a solicitor”, in line one of subsection (2), the words “A solicitor”; and
- (d) by deleting the words “a clerk of petty sessions or by”, in line one of subsection (3).
- Amendment to section 19.  
(Guarantor not to be bound in certain cases unless independently advised.)
18. Section 20 of the principal Act is amended—
- (a) by repealing and re-enacting subsections (2) and (3) as follows—
- (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
- Amendment to section 20.  
(As to insurance of goods comprised in hire-purchase agreements.)

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. ; and

(b) by adding at the end of the section a subsection as follows—

(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. .

Addition of  
Part VA.

19. The principal Act is amended by adding after Part V a Part as follows—

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

*Division 1.—Hire-Purchase Licensing  
Tribunal.*

Establish-  
ment of the  
Tribunal.

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

(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.

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 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.

Proceedings  
before 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.

Powers of  
the Tribunal.

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

- (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.

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.

Reasons for  
decision of  
Tribunal to  
be given.

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

Case stated.

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

(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.

(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.

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. Operation of order may be suspended.

(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.

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.

23K. (1) 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.

Application.

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.

(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—

Entitlement to be granted a licence.

- (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.

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.

(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.

Surrender  
of licence.

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.

Licence not  
transfer-  
able.

23P. A licence is not transferable.



*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.

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.

(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.

(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.

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.

Name in which a licensed credit provider is to carry on business.

Penalty: Five hundred dollars.

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

Corporation must employ licensed person as manager.

(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.

(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.

Amendment  
to section  
24.  
(Power to  
court to  
re-open  
certain hire-  
purchase  
transac-  
tions.)

20. Section 24 of the principal Act is amended—

- (a) by adding after the word “unconscionable”, in line five of subsection (1), the passage “(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)”; and
- (b) by substituting for the words “any court”, in line one of subsection (4), the passage “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,”.

Amendment  
to section  
25.  
(Power of  
court to  
restrain re-  
possession  
of certain  
goods from  
farmer.)

21. Subsection (2) of section 25 of the principal Act is amended by substituting for the words “court of petty sessions”, in line two, the words “Local Court”.

22. Section 32 of the principal Act is amended— Amendment to section 32.

- (a) by adding after the word “dealer”, in line one, the words “or his agent or employee”; (False statements by dealers in proposals.)
- (b) by adding after the word “dealer” in line seven, the passage “, his agent, or his employee, as the case may be,”; and
- (c) by substituting for the words “two hundred pounds”, in the second last line, the words “one thousand dollars”.

23. Section 35 of the principal Act is amended by substituting for the words “court of petty sessions”, in line four, the words “Local Court”. Amendment to section 35. (Power to court to extend times.)

24. Subsection (1) of section 36 of the principal Act is amended— Amendment to section 36.

- (a) by substituting for the words “complaint made”, in line one, the words “application made to a Local Court”; (Power to court to order delivery of goods unlawfully detained.)
- (b) by adding after the word “owner”, in line four, the passage “, it is claimed”; and
- (c) by deleting the words “a justice may summon the person complained of to appear before a court of petty sessions and”, in lines nine and ten.

25. The principal Act is amended by adding after section 36 sections as follows— Addition of section 36A-36C.

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 Relief against consequences of breach.

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.

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

Advertise-  
ments.

(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.

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. .

Amendment  
to section  
38.  
(Size, etc.,  
of type, etc.,  
required in  
certain  
documents.)

26. Section 38 of the principal Act is amended—

- (a) by substituting for the words “the type known as ten-point Times”, in line two of paragraph (b) of subsection (1), the words “ten-point or of a face that is not approved by the Commissioner”;
- (b) by deleting the word “and” after paragraph (d) of subsection (2); and
- (c) by substituting for the passage “Act.”, at the end of the section, a passage as follows—

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. .



27. Subsection (2) of section 39 of the principal Act is amended by substituting for the words "two hundred pounds", in lines three and four, the words "one thousand dollars".

Amendment  
to section  
39.  
(Penalty.)

28. The principal Act is amended by adding after section 40 a section as follows—

Section 40A  
added.

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.

Regulations.

(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. .

Amendment  
to  
Schedules.

**29. The principal Act is amended—**

(a) by substituting for the First Part of the First Schedule a Part as follows—

**FIRST SCHEDULE—First Part.**

**Hire Purchase Act, 1959.**

s. 3(1)

**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.....

**INSTALLMENTS**

(Insert here clearly the commencing date, frequency, 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 Registration Fees .....		
„ Insurance .....		
„ Agreement Registration Fees .....		
AMOUNT FINANCED .....		
Add: Terms Charges (Percentage Rate) .....		
Balance Originally Payable Under the Agreement .....		
Add Deposit Above.....		
<b>TOTAL AMOUNT PAYABLE</b> .....		
(Including Deposit)		

FOR ATTENTION OF PROPOSED HIRER :

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

FOR ATTENTION OF GUARANTOR (If applicable):

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

### REBATE ON TERMS CHARGES

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

- (b) by substituting for the Second Schedule a Schedule as follows—

S. 4  
S. 18

#### 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;

- (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. ;

- (c) by substituting for the Third Schedule a Schedule as follows—

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 the.....day of.....

\* Insert description of goods.

19....., 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.....	\$.....

(d) by substituting for all that part of the Fourth Schedule after the heading "DO NOT DELAY." a passage as follows—

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. ;

and

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† 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. ;

(e) by adding a Schedule as follows—

FIFTH SCHEDULE.

Hire-Purchase Act, 1959.

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.

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