



ANNO VICESIMO SECUNDO

# GEORGII V REGIS.

A.D. 1931.

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## No. 2049.

An Act to amend the law relating to Hire-purchase Agreements.

[Assented to, December 9th, 1931.]

**B**E it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Hire-purchase Agreements Act, 1931". Short title.

2. (1) In this Act, unless the context otherwise requires— Interpretation.

"Hirer" means the person who takes goods on hire under a hire-purchase agreement:

"Hire-purchase agreement" includes any agreement not being a Bill of Sale whereby—

(a) any person agrees to hire any goods and obtains an option to purchase those goods; or

(b) any person agrees to pay for the hire of goods a sum or sums amounting in all to not less than three-quarters of the value of the goods when taken on hire.

"Owner" means the owner for the time being of goods let on hire under a hire-purchase agreement.

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Mode of computing  
unpaid balance due  
under agreement.

(2) For the purposes of this Act the unpaid balance of the moneys payable under a hire-purchase agreement shall be ascertained as follows—

- (a) where the agreement provides that the hirer shall or may obtain the property in the goods upon payment of amounts specified in the agreement, the said unpaid balance shall mean the amounts still to be paid at the relevant time before the property in the goods will or may pass to the hirer :
- (b) where the agreement does not so provide the said unpaid balance shall mean the value of the goods at the commencement of the hiring, together with interest thereon at eight per centum per annum for the period during which the goods have been held on hire, less any amounts paid by the hirer by way of deposit or rent.

Construction of Act.

3. (1) This Act shall bind the Crown.

(2) This Act shall be construed subject to the Debt Adjustment Act, 1929, and the Farmers Relief Act, 1931.

Power of owner on  
default by hirer.

4. (1) If the hirer makes default in the payment of any money due under a hire-purchase agreement, or in the observance of any covenant or condition or term of the agreement, the owner may, without any further consent or concurrence on the part of the hirer, and in addition to any of his rights and remedies under the hire-purchase agreement do any one or more of the following things, namely :—

- (a) enter upon any land (whether land of the owner or anyone else) where the goods comprised in the agreement are, or where the owner or his agent reasonably suspects that they are :
  - (b) for the purpose of the entry, open or remove any outer or inner gate, door, fastening or obstruction :
  - (c) seize and take possession of the goods :
  - (d) remove the goods to any place for safety, convenience of sale or re-hiring, or for any other purpose, or suffer them to remain where they are found :
  - (e) sell or re-hire the goods either in one or more lots and at any time or times and at any place or places, and either by public auction or private contract, or partly by public auction and partly by private contract :
  - (f) give credit to the purchaser for the whole or any part of the purchase price, and take or forego any security for payment of the unpaid purchase money :
  - (g) make any reasonable terms and conditions of the sale or re-hiring :
- (h) buy

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(h) buy in all or any of the goods at any sale by auction thereof :

(i) rescind or vary any contract for the sale or re-hiring of the goods, and again sell or re-hire the goods :

(j) execute any contract or other instrument necessary for the exercise of any of the powers aforesaid.

(2) The owner shall apply the proceeds of any sale or of re-hiring of any goods seized under this section as follows :—

(a) in payment of any expenses reasonably incurred for the purpose of making the goods saleable, and the costs of and incidental to the re-possession and the re-sale or re-hiring, including the costs of transporting the goods to the premises of the owner, and of insuring the goods, and the execution of any other powers given by the last preceding subsection :

(b) in payment of the unpaid balance of the moneys payable under the hire-purchase agreement, together with interest at the rate of eight per centum thereon from the date when the agreement would have expired if it had been completely carried out by both parties, until the date of re-sale or re-hiring :

(c) the balance shall be paid to the hirer of the goods.

(3) If an owner who has re-possessed any goods comprised in a hire-purchase agreement does not sell or re-hire those goods within twelve months after re-possession thereof he shall be under the same liability to the hirer as if he had sold the goods immediately upon the expiration of the said twelve months, and he shall be deemed to have received as proceeds of that sale the sum representing the price which the goods might reasonably be expected to have realised if they had been made saleable and sold at that time. Subsection (2) of this section shall be construed to apply in every such case accordingly.

(4) This section shall apply in respect to every default made after the commencement of this Act under any hire-purchase agreement whether entered into before or after this Act.

5. If any harvester, binder, tractor, plough, or other agricultural implement or motor truck held under hire-purchase agreement by a farmer is re-possessed for non-payment of any instalment or instalments, the farmer may, within one month of the re-possession, apply to the Local Court of Full Jurisdiction nearest to his farm for an order that the chattel so re-possessed shall be restored to the farmer. If the Court is satisfied that the farmer will have a reasonable prospect of being able to pay all instalments due and owing at the time of the re-possession within twelve months from the date of re-possession it may make an order that the said chattel be restored to the farmer and left in his possession during

Special provisions  
with regard to  
certain goods hired  
by farmers.

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during such period not longer than twelve months, as the Court fixes. Every such order shall be subject to the payment by the hirer of the expense reasonably incurred by the owner in re-possessing the chattel and shall be on any terms as to payment of instalments or otherwise as the Court thinks just, and shall be final. In this section "farmer" means any person who is engaged in the business of producing for sale wheat, barley, oats, or rye, or hay, of any of those crops.

**Contracting out.**

**6.** Every agreement or term of an agreement whereby any person agrees that this Act or any provision hereof shall not apply to any transaction shall be void for all purposes.

**Liability for fraud, &c.**

**7.** No term of any agreement, whether entered into before or after the commencement of this Act, shall prevent a hirer from claiming or being awarded damages or any other relief for fraud or misrepresentation of the owner or any person acting or purporting to act on behalf of the owner in connection with any transaction of hire-purchase.

**Provisions for terminating agreement in bankruptcy void.**

**8.** Every agreement (whether a hire-purchase agreement or some separate agreement) and every term of any such agreement whereby it is provided that any hire-purchase agreement shall terminate or may be terminated, or that the goods therein comprised shall or may be re-possessed, or that any right of the hirer shall terminate 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) shall to the extent to which it so provides be void.

If the hiring is expressed to continue until the happening of any such event as aforesaid it shall be deemed to be a hiring continuing for the period for which it would continue apart from the said provision.

**Penalty for fraudulent disposition of goods.**

**9.** If any person conceals, sells, pawns, or disposes of any goods comprised in a hire-purchase agreement with an intent to deprive the owner thereof of his ownership or possession or right to possession he shall be guilty of an offence punishable on summary conviction and liable to imprisonment for any term not exceeding twelve months.

**Hire-purchase goods not to be fixtures.**

**10.** Goods which are comprised in a hire-purchase agreement shall, whilst the agreement is in force, be incapable of becoming fixtures to realty.

**Stamp duty on assignments.**

**11.** Notwithstanding the Stamp Duties Act, 1923, the stamp duty payable on an assignment of any of the rights, powers, and liabilities of the owner under a hire-purchase agreement shall be at the rate of One Shilling for every Fifty Pounds or part of Fifty Pounds comprised in the consideration for the assignment.

**12.** (1) If

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**12.** (1) If at the request of the owner of any goods, a person who lends money on the security of hire-purchase agreements (hereinafter called "the lender"), enters into a hire-purchase agreement in relation to those goods with a hirer, the lender shall be in the same position as regards the agreement as if it had been made between the owner and the hirer, and had been duly assigned to the lender by the owner.

Provisions as to financiers entering into agreements as owners.

(2) Nothing in this section shall affect any right of the hirer against the owner or against the lender, either under the terms of the hire-purchase agreement, the provisions of this Act, or otherwise.

**13.** The Governor may make any regulations necessary or convenient for carrying this Act into effect, and may by a regulation impose penalties recoverable summarily and not exceeding Twenty Pounds for breach of any regulation.

Regulations.

**14.** Any notice or document required to be served on or given to any person under this Act shall be deemed duly served or given if it has been—

Notices, how given.

- (a) given to such person personally ; or
- (b) left at his usual or last known place of abode ; or
- (c) sent by post by registered letter to his usual or last known place of abode or an address for service mentioned in any notice given by him.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

A. HORE-RUTHVEN, Governor.