

THE THIRD SCHEDULE.

(Section 21.)

IN THE SUPREME COURT
OF TASMANIA.

I HEREBY certify that _____, Esquire, is on the Roll of the Supreme Court of Tasmania as a Practitioner of the Court, and is entitled to practise as such until the 31st day of December next.

Dated at Hobart this _____ day of _____, 19____.
Registrar.

HIRE-PURCHASE.

No. 79 of 1959.

AN ACT to consolidate and amend the law relating
to the hire-purchase of goods.
[23 December 1959.]

BE it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled,
as follows:—

PART I.

PRELIMINARY.

Short title
and com-
mencement.

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

(2) This Act shall commence on a date to be fixed by proclamation.

Repeal.

2—(1) The *Hire-purchase Act* 1943 and the *Hire-purchase Act* 1947 are repealed.

(2) Notwithstanding the repeal of the Acts mentioned in subsection (1) of this section, those Acts continue to have the same operation and effect in relation to hire-purchase agreements entered into before the commencement of this Act as if this Act had not been enacted.

Application
of Act.

3 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 commencement of this Act.

- 4—**(1) In this Act, unless the contrary intention appears— Interpretation.
Cf. No. 6531
(Vict.), s. 2.
- “balance originally payable under the agreement”, used in relation to a hire-purchase agreement, has the meaning assigned to that expression by sub-paragraph (ix) of paragraph (e) of subsection (1) of section six;
- “cash” includes a cheque drawn on a banker;
- “cash price”, used in relation to goods comprised in a hire-purchase agreement, has the meaning assigned to that expression by sub-paragraph (i) of paragraph (e) of subsection (1) of section six;
- “court of petty sessions” means any two or more justices sitting in petty sessions;
- “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 are carried out or by whom or on whose behalf the transaction leading to a hire-purchase agreement with the owner is arranged;
- “freight” has the meaning assigned to that expression by sub-paragraph (v) of paragraph (e) of subsection (1) of section six;
- “goods” includes all chattels personal other than money or things in action;
- “guarantor” means a person who guarantees the performance by a hirer of all or any of his obligations under a hire-purchase agreement but does not include the dealer or a person engaged, at the time of the giving of a guarantee, in the trade or business of selling goods of the same nature or description as the goods comprised in the hire-purchase agreement;
- “hire-purchase agreement” includes a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise) but does not include an agreement—
- (a) whereby the property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods; or
 - (b) under which the person by whom the goods are being hired or purchased is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement;
- “hirer” 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 pass by assignment or by operation of law;

- “insurance” has the meaning assigned to that expression by sub-paragraph (iii) of paragraph (e) of subsection (1) of section six;
- “maintenance” has the meaning assigned to that expression by sub-paragraph (iv) of paragraph (e) of subsection (1) of section six;
- “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 by operation of law;
- “period of the agreement”, used 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;
- “statutory rebate”—

(a) used 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, at the relevant time, 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) used 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 commenced; and

(ii) ninety per cent of the proportion of the amount of the premium for insurance in respect

of the then current annual period attributable to the unexpired portion of that period consisting of whole months; and

- (c) used 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 by dividing the product so obtained by the number of complete months in the period of the agreement;

“terms charges”, used in relation to a hire-purchase agreement, has the meaning assigned to that expression by sub-paragraph (viii) of paragraph (e) of subsection (1) of section six;

“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”, used 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 the agreement;

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

(2) A reference in this Act to the taking of possession by the owner of goods comprised in a hire-purchase agreement includes a reference to—

- (a) the taking of possession of goods by the owner pursuant to an order of any court; and
(b) the return of goods to the owner after notice has been served on the hirer pursuant to the provisions of subsection (1) of section seventeen,

but does not include a reference to the taking of possession of goods by the owner as the result of the voluntary return of the goods.

(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-purchase transaction to be given to prospective hirer.

Ibid., s. 3 (1).

5—(1) Before a hire-purchase agreement is entered into in respect of any goods the owner or, if there is a dealer, the dealer shall give or cause to be given to the prospective hirer a statement in writing duly completed in accordance with the form in the first schedule.

(2) For the purposes of this section, where a hire-purchase 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 statement mentioned in subsection (1) of this section was given to the prospective hirer before the offer was so signed.

Form and contents of hire-purchase agreements.

Ibid., s. 3 (2), (3), (4), (6).

6—(1) Every hire-purchase agreement—

- (a) shall be in writing;
- (b) shall be signed by or on behalf of the hirer and all other parties to the agreement;
- (c) shall—
 - (i) specify a date on which the hiring shall be deemed to have commenced;
 - (ii) specify the number of instalments to be paid under the agreement by the hirer;
 - (iii) specify the amount of each of those instalments and the person to whom and the place at which the payments of those instalments are to be made;
 - (iv) specify the time for the payment of each of those instalments; and
 - (v) contain a description of the goods sufficient to identify them;
- (d) where any part of the consideration is or is to be provided otherwise than in cash, shall contain a description of that part of the consideration; and
- (e) shall set out in a tabular form—
 - (i) the price at which, at the time of signing the agreement, the hirer might have purchased the goods for cash (in this Act called and in the agreement to be described as the “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 cash and the amount provided by a consideration other than cash;

- (iii) 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");
- (iv) 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");
- (v) 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");
- (vi) any amount included in the total amount payable to cover vehicle registration fees (in the agreement to be called "vehicle registration fees");
- (vii) the total of the amounts referred in sub-paragraphs (i), (iii), (iv), (v), and (vi) of this paragraph, less the deposit;
- (viii) the amount of any other charges included in the total amount payable (in this Act called and in the agreement to be described as "terms charges");
- (ix) the total of the amounts referred to in sub-paragraphs (vii) and (viii) of this paragraph (in this Act called "the balance originally payable under the agreement"); and
- (x) the total amount payable.

(2) Nothing in paragraph (e) of subsection (1) of this section requires the matters specified in that paragraph to be set forth in a hire-purchase agreement in the order in which they are mentioned in that paragraph.

(3) An owner who enters into a hire-purchase agreement that does not comply with subsection (1) of this section is guilty of an offence.

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

7—(1) Where a provision of—

(a) section five; or

(b) section six (other than paragraph (a) of subsection (1) thereof),

Effect of
non-com-
pliance with
certain
provisions.
Ibid., s.3
(4).

is not complied with in relation to a hire-purchase agreement, the liability of the hirer thereunder is, by force of this subsection, reduced by the amount included in the 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.

(2) Nothing in this section affects the liability of a person to be convicted of an offence against section five or section six.

Certain copy documents to be served on hirer.
Ibid., s. 4.

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

- (a) a copy of the agreement in writing;
- (b) a notice in writing in or to the effect of the second schedule; 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.

(2) For the purposes of this section, the notice referred to in paragraph (b) of subsection (1) of this section may be endorsed on the copy of the agreement served on the hirer pursuant to this section.

PART III.

PROTECTION OF HIRERS.

Division I—Warranties and conditions.

Conditions and warranties to be implied in hire-purchase agreements.
Ibid., s. 5.

9—(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; and
- (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 when the agreement was made;
- (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 that statement was brought to his notice.

(3) Where the hirer expressly or by implication makes known to the owner or to the dealer or to any servant or agent of the owner or of 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 that statement was brought to his notice.

(4) Without prejudice to any other rights or remedies to which an owner may be entitled, where the hirer has made known expressly or by implication to the dealer or to any servant or agent of the dealer the particular purpose for which the goods are required, the 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 of law whereby any condition or warranty is to be implied in any hire-purchase agreement.

10—(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 confers on the hirer—

Liability of owners and dealers for misrepresentation.

Ibid., s. 6.

- (a) as against the owner, the same 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 the first-mentioned person was acting in making it, the same right of action in damages as the hirer would have had against them or either of them if the hirer had purchased the goods from the first-mentioned 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 II—Statutory rights of hirers.

Hirer
entitled to
copy of
agreement
and statement
of his
position
thereunder.
Ibid., s. 7.

11—(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 accompanied by a fee of one shilling, send to the hirer a copy of the agreement, together with a statement, in writing, signed by the owner or his agent showing—

- (a) the amount paid to the owner by or on behalf of the hirer;
- (b) the amount that 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 such a request if he has sent the hirer a copy of the agreement and a statement under this subsection 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 is guilty of an offence and is liable to a penalty of fifty pounds, 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.

12 A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner is entitled, 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 the hirer 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 such an 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.

Appropriation of payments when more than one agreement.
Ibid., s. 8.

13—(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.

Assignments of rights under hire-purchase agreements.
Ibid., s. 9.

(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 court of petty sessions for an order declaring that the consent of the owner to that assignment has unreasonably been withheld, and where such an order is made that consent shall be deemed to be unreasonably withheld.

(4) As a condition of granting consent to an assignment of the right, title, and interest of the hirer under a hire-purchase agreement, the owner may stipulate that all defaults under the 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 remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the resi-

due of the term thereof and whereby the assignee indemnifies the hirer in respect of those liabilities; and

- (b) to pay the reasonable costs (if any) incurred by the owner in stamping or registering the assignment agreement or counterparts.

(5) The right, title, and interest of a hirer under a hire-purchase agreement 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.

Ibid., s. 10.

14 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 court of petty sessions may, on the application of the hirer, make an order approving the removal of the goods to some other place which place shall thereafter, for the purposes of the agreement, be substituted for the first-mentioned place.

Division III—Early completion of agreements.

Hirer entitled to finalize agreement at any time.
Ibid., s. 11.

15—(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 the balance originally payable under the agreement less any amounts (other than the deposit) paid or provided, whether by way of 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 a hirer by this section may be exercised by him—

- (a) at any time during the continuance of the agreement; or
- (b) where the owner has taken possession of the goods, on paying or tendering to the owner, before or within twenty-one days after the owner has served a notice in the form of the fourth schedule on the hirer, in addition to the net balance due—

- (i) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods; and
- (ii) any amount properly expended by the owner on the storage, repair, or maintenance of the goods.

Division IV—Voluntary return of goods.

16—(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 to 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 such a place terminates the hiring.

*Power to
hiring.
determine
Ibid., s. 12.*

(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 court of petty sessions 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 place for the return of the goods.

(5) Notice of an application under this section shall be given to the owner by the hirer not less than twenty-four hours before the time at which the application is to be heard.

(6) Subject to this section, where a hire-purchase agreement is determined pursuant to this section the owner is entitled to recover from the hirer—

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

whichever is the lesser amount.

(7) An owner is not entitled to recover any sum under subsection (6) of this section unless within fourteen days of the termination of the agreement under this section he serves or causes to be served on the hirer a notice in writing stating—

- (a) his estimate of the value of the goods at the time that they were returned under this section;
- (b) the total amount that has been paid or provided (whether by way of cash or other consideration) by or on behalf of the hirer under the agreement; and
- (c) his estimate of the amount which he is entitled to recover from the hirer under this section.

Division V—Repossessions.

Notices to be given to hirer when goods repossessed.

Ibid., s. 18.

17—(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 a notice, in writing, in the form of the third schedule and the period fixed by the notice (being not less than seven days after the service of the notice) has expired.

(2) An owner is not obliged to comply with subsection (1) of this section if there are reasonable grounds for believing that the goods comprised in the hire-purchase agreement will be removed or concealed by the hirer contrary to the provisions of the agreement, but the onus of proving the existence of those grounds lies upon the owner.

(3) Within 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 notice had been duly given.

Owner to retain possession of goods repossessed for twenty-one days.

Ibid., s. 14.

18 Where an owner has taken possession of any goods he shall not, without the consent in writing of the hirer, sell or dispose of the goods or part with the possession thereof until after the expiration of twenty-one days after the date of the service on the hirer of the notice referred to in subsection (3) of section seventeen, or, if notice under sub-paragraph (i) of paragraph (a) of subsection (1) of section nineteen has been given, until the time for payment or tender pursuant to the last-mentioned notice has expired (whichever is the later).

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

Rights and immunities of hirer when goods repossessed.

Ibid., s. 15.

- (a) The hirer may, before or within twenty-one days after the service on him of the notice referred to in subsection (3) of section seventeen, 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 twenty) the goods that have been repossessed; or
 - (ii) require the owner to sell the goods to any person introduced by the hirer who is prepared to purchase the goods for cash at a price not less than the estimated value of the goods set out in the first-mentioned notice;
- (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 way of 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 way of 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) that 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 way of 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 that could reasonably be 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 seventeen, 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.

20—(1) If, within fourteen days after giving notice to the owner pursuant to paragraph (a) of subsection (1) of section nineteen, the hirer—

Power to
hirer to
regain
possession of
goods in
certain
circum-
stances.
Ibid., s. 16.

(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 that 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.

Power to
court to vary
existing
judgments or
orders when
goods are
re-possessed.
Ibid., s. 17.

21 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 nineteen.

PART IV.

GUARANTEES.

Provisions as
to guarantors.
Ibid., s. 18.

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

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

Guarantor not
to be bound
in certain
cases unless
independ-
ently
advised.
Ibid., s. 19.

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

- (a) to pay to the owner under a hire-purchase agreement an aggregate sum that 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 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 is guilty of an offence against this Act, unless the agreement is executed by the guarantor in the presence of a clerk of petty sessions or a solicitor instructed and employed independently of the owner and the clerk or the solicitor, as the case may be, certifies in writing upon the agreement—

(e) that he is satisfied that the guarantor understands the true purport and effect of the agreement; and

(f) that the guarantor has executed the agreement in his presence.

(2) A clerk of petty sessions or 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 clerk of petty sessions or by a solicitor to comply with subsection (2) of this section in respect of a certificate does not invalidate the certificate.

PART V.

INSURANCE.

24—(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.

Provisions relating to the insurance of goods comprised in hire-purchase agreements.

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

Ibid., s. 20.

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

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

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

Powers of court in relation to insurance contracts associated with hire-purchase agreements.
Ibid., s. 21.

25—(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.

(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 has already been made under subsection (1) of this section, apply to a court of petty sessions for an order that the failure to observe or perform 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 shall be determined as if the failure the subject of the order had not occurred.

Provisions relating to contents of contracts of insurance.
Ibid., s. 22.

26—(1) Every copy of a policy of insurance (not being a policy relating to third party insurance), and every statement, served upon a hirer pursuant to section eight 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 shall be maintainable upon such a contract or against the insurer in respect of any claim under, or difference or dispute arising out of, such a contract unless the claim, difference, or dispute has been referred to arbitration or an award pursuant to arbitration proceedings has been first obtained;
- (c) providing that arbitration or an award pursuant to arbitration proceedings is a condition precedent to any right of action or suit upon such a contract; or
- (d) otherwise imposing by reference to arbitration or to an award made in arbitration proceedings any limitation on the right of any person to bring or maintain any action or suit upon such a contract,

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.

27—(1) The provisions of sections twenty-five and twenty-six 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 this Part. Ibid., s. 23.

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

PART VI.

MINIMUM DEPOSITS.

28—(1) No person shall enter into a hire-purchase agreement unless the owner thereunder has first obtained from the proposed hirer thereunder a deposit in cash or in goods, or partly in cash and partly in goods, to a value equal to at least the prescribed proportion of the cash price of the goods comprised in the agreement.

Minimum deposits. Cf. 7 Geo. VI No. 34 (Tas.), s. 24.

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

- (a) one-fifth, in the case where the goods comprised in the agreement consist of or include a motor vehicle; or
- (b) one-tenth, in any other case.

(3) In this section "motor vehicle" means a mechanically propelled vehicle intended or adapted for use on roads, but does not include any vehicle constructed or adapted for propulsion on rails only.

Certain payments not to be treated as deposits for the purposes of this Part.

29—(1) No deposit—

- (a) to the extent that it is in cash and that it is made out of moneys borrowed directly or indirectly—
 - (i) from or through the owner (if the owner is not a banker);
 - (ii) from or through the dealer; or
 - (iii) from or through any person whose business or part of whose business it is, by agreement with the owner or dealer or any person acting on behalf of the owner or dealer, to advance money to enable deposits to be paid in respect of hire-purchase agreements with the owner;
- (b) to the extent that, where the deposit is in goods or partly in goods and the amount allowed in respect of the goods is substantially greater than the value of the goods, that amount exceeds that value;
- (c) to the extent that it is made out of an amount allowed or credited in respect of, or by reference to, amounts paid by the hirer as rent or hire under a bailment of the goods before the making of a hire-purchase agreement in respect of the goods; or
- (d) to the extent that it is provided by goods that were, to the knowledge of the owner or dealer, acquired by the hirer for the purpose of being used by the hirer to provide the deposit under the agreement,

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

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

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

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

(4) The dealer shall, in relation to the deposit obtained by him under a proposed hire-purchase agreement, certify in writing—

- (a) where the deposit was paid or provided solely in cash, that the deposit was paid or provided solely in cash;
- (b) where the deposit was provided solely in goods, the nature and description of the goods and the amount allowed by the dealer in respect of the goods; or
- (c) where the deposit was paid or provided partly in cash and partly in goods, the amount of the deposit that was paid or provided in cash and the nature and description of the goods and the amount allowed by the dealer in respect of the goods.

(5) A dealer who, under subsection (4) of this section, certifies as the amount allowed by him in respect of goods an amount that is not a reasonable estimate of the value of the goods or give a certificate that is false in any other material particular is guilty of an offence against this Act.

(6) Notwithstanding anything in this Part, where an owner in entering into a hire-purchase agreement acts on the faith of a certificate given under subsection (4) of this section by the dealer and the amount certified in the certificate as being the amount allowed in respect of the goods the nature and description of which are certified therein is substantially greater than the value of those goods the agreement has the same effect as if the amount so certified were the value of those goods.

(7) Nothing in subsection (6) of this section affects the liability of any person to be convicted of an offence against this section.

(8) A person who knowingly enters into, or procures, arranges, or otherwise assists or participates in, a transaction contravening this section is guilty of an offence against this Act.

30—(1) A person, other than a banker, who (whether or not he carries on any other business) carries on the business of lending or making loans to other persons for the purpose of enabling those other persons to pay the deposits required by section twenty-eight is guilty of an offence against this Act.

*Offences.
Cf. No. 56
of 1941.
(N.S.W.),
s. 32.*

(2) A person who accepts as a deposit under a hire-purchase agreement any money or other consideration that he has reasonable cause to believe or suspect was lent to the hirer by any person, other than a banker, who carries on the business referred to in subsection (1) of this section is guilty of an offence against this Act.

PART VII.

MISCELLANEOUS.

Maximum
term.

Tas., s. 26.

31—(1) No person shall enter into a hire-purchase agreement if the period of the agreement exceeds—

(a) ten years, where the goods comprised in the agreement consist wholly of prescribed goods; or

(b) five years, where the goods comprised in the agreement consist—

(i) wholly of goods other than prescribed goods; or

(ii) partly of goods other than prescribed goods and partly of prescribed goods.

(2) In this section, “prescribed goods” means—

(a) agricultural implements;

(b) machinery designed for use, or capable of being used, for manufacturing purposes or industrial purposes;

(c) motor tractors;

(d) appliances, machinery or equipment, designed for use, or capable of being used, whether wholly or partly in or for the purposes of primary production.

Effect of
contraven-
tion of
certain
provisions.

32—(1) Subject to this section, nothing in Part VI or section thirty-one invalidates any contract entered into in contravention of that Part or that section, and the rights, powers, and remedies of any person under such a contract shall be the same as if that Part and that section had not been enacted.

(2) Nothing in this section affects the liability of any person to be convicted of an offence against Part VI or section thirty-one.

Power to
court to
re-open
certain
hire-purchase
transactions.
Vict., s. 24.

33—(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 before which the proceedings are brought that the transaction is harsh and unconscionable or is otherwise such that the Supreme Court would give relief on an equitable ground the court may re-open the transaction and take an account between the parties thereto.

(2) A 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 case and may give judgment against that person for such amount as it thinks fit or for the delivery of the goods if they are in his possession, and the court may make such other order in respect of that person as it thinks fit.

(4) Proceedings may be instituted in any court by the hirer or a guarantor under a hire-purchase agreement for the purpose of obtaining relief under this section.

(5) In any proceedings under this section the court before which the proceedings are brought 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) in a case where the owner has taken possession of the goods comprised in the agreement, after the expiration of a period of four months after the date on which the owner serves on the hirer the notice required by subsection (3) of section seventeen to be served on him; or
- (b) in any other case, after the expiration of a period of four months after the date on which the transaction is closed.

34—(1) Where goods, being a harvester, binder, tractor, plough, or other agricultural implement, or a motor truck, are comprised in a hire-purchase agreement under which the hirer is a farmer—

- (a) subsection (1) of section seventeen has effect as if the word "seven" were omitted therefrom and the word "thirty" were substituted therefor; and

Power to
court to order
return of
goods
re-posseessed
from a
farmer.
Vict., s. 25.
No. 2049 of
1931
(S. Aust.),
s. 5.

- (b) the farmer may, within the period fixed by a notice served on him under that subsection, as modified by this subsection, apply to a court of petty sessions for an order restraining the owner from taking possession of the goods.

(2) 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 application within twelve months after the date of the application, 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.

(3) An order under subsection (2) of this section may include such terms and conditions, including conditions as to payment of instalments, as the court thinks fit.

(4) In this section, "farmer" means any person 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.
Vict., s. 26.

35—(1) Subject to this section, where work is done upon goods comprised in a hire-purchase agreement in such circumstances that, if the goods were the property of the hirer, the person doing the work would be entitled to a lien on the goods for the value of his work, that person 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 person doing the work had notice of that provision before doing the work upon the goods.

Fixtures.
Ibid., s. 27.

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

(2) Notwithstanding anything in subsection (1) of this section, the owner is not entitled to repossess goods that have been affixed to a dwelling-house if, after the goods have become so affixed, any person other than the hirer has, in good faith, acquired for valuable consideration an interest in the land without notice of the rights of the owner of the goods.

*Avoidance
of certain
provisions.*
Vict., s. 28.

37—(1) A provision in any agreement or other document whereby—

- (a) a 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 cent per annum on a daily basis for the period for which it is due and not paid;
- (e) a 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 authorized 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 authorized to re-possess any goods comprised in a hire-purchase agreement if the hirer becomes bankrupt or commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement (whether all or any of those events are named); or
- (i) except as expressly provided by this Act, the operation of any provision of this Act is excluded, limited, modified, or restricted,

is void.

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

Restrictions
on payments
to owners of
goods by
financiers.

Ibid., s. 29.

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

- (a) enter into a hire-purchase agreement in relation to those goods with a hirer;
- (b) accept an 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.

Ibid., s. 30.

39 A person (in this section referred to as “the owner”) who knowingly—

- (a) enters into an agreement for the bailment of goods to any person (in this section referred to as the “hirer”) which agreement does not by itself constitute a hire-purchase agreement; or
- (b) takes from any person (in this section referred to as “the hirer”) an offer in writing that, if accepted, would constitute an agreement for the bailment of goods but would 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 is guilty of an offence against this Act.

40 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,

Provisions relating to securities collateral to hire-purchase agreements.
Ibid., s. 31.

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

41 No person, being a dealer or being or acting as the agent or employee, of a dealer, shall, with the intention of bringing about a contractual relationship between an owner and a hirer, prepare or cause to be prepared—

False statements by dealers in proposals.
Ibid., s. 32.

- (a) a hire-purchase agreement; or
- (b) an offer in writing that, if accepted, will constitute a hire-purchase agreement,

that, to his knowledge, contains a false statement or a representation that is false in a material particular.

Penalty: Two hundred pounds or imprisonment for two years.

42 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 such a notice, give to the owner such a statement or who gives a statement containing any information that the hirer knows to be false is guilty of an offence against this Act.

Right of owner to require hirer to state where goods are.
Ibid., s. 33.

43 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 is guilty of an offence against this Act and is liable to a penalty of two hundred pounds or to imprisonment for a term of two years.

Fraudulent sale or disposal of goods by hirer.
Ibid., s. 34.

44 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 court

Power to court to extend times.
Ibid., s. 35.

of petty sessions or to 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 order
delivery of
goods
unlawfully
detained.
Ibid., s. 36.

45—(1) Upon complaint made by an owner who is entitled to take possession of any goods comprised in a hire-purchase agreement or by any person acting on behalf of an owner that the hirer or any person acting on behalf of the hirer has refused or failed to deliver up possession of the goods on the service of a notice of demand made by the owner or by an agent of the owner authorized in that behalf, a justice may summon the person complained of to appear before a court of petty sessions and if it appears to the court 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 under this section is guilty of an offence against this Act.

(3) Conviction of a person for an offence under this section in respect of any goods does not prejudice the making of an order or a further order under this section against that person or any other person in respect of those goods.

Service
of notices.
Ibid., s. 37.

46—(1) Any notice or document required or authorized to be served on or given or sent to an owner or hirer under this Act (other than a notice under section seventeen) 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) Any notice under section seventeen shall be served on a hirer—

- (a) by delivering it to him personally; or
- (b) by sending it by registered post or certified mail addressed to him at his usual or last-known place of abode or business.

(3) 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 document or notice if the deponent swears to the facts necessary to prove due service either from his own knowledge or to his information and belief based on and verified by the records of the owner.

(4) References in this section to the sending of any notice or document by certified mail shall be construed as references to the transmission of that notice or document by post as certified mail as provided by the postal regulations for the time being in force.

47—(1) Any prescribed document or part thereof that—

- (a) is in handwriting that is not clear and legible; or
- (b) is printed in type of a size smaller than the type known as ten-point Times,

Size and kind of type, &c., required in certain documents.
Ibid., s. 38.

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

(2) Subsection (1) of this section does not apply to the signature of any person in or on a document or to a mark made in or on a document by a person in place of a signature, if that person is clearly identified by name in the document.

(3) In this section, "prescribed document" means—

- (a) any hire-purchase agreement;
- (b) any statement under subsection (1) of section five;
- (c) any copy of an agreement, notice, or statement required by section eight to be served on a hirer;
- (d) any statement required by subsection (1) of section eleven to be sent to a hirer; and
- (e) any notice under subsection (1) or subsection (3) of section seventeen.

48—(1) A person who sells any goods under a hire-purchase agreement shall keep proper records setting out particulars of the agreement and of all amounts charged or received by him thereunder.

Records to be kept of hire-purchase agreements.
7 Geo. VI
No. 34
(Tas.),
s. 27.

(2) Where a person sells goods under two or more hire-purchase agreements the records required by subsection (1) of this section shall be kept in relation to each of those agreements.

(3) Each record kept pursuant to this section shall be preserved by the person by whom they are kept for a period of at least two years after the completion of the transaction to which the record relates.

49—(1) A person who contravenes or fails to comply with any provision of this Act is guilty of an offence. Penalty.

(2) A person who is guilty of an offence against this Act for which no other penalty is expressly provided in this Act is liable to a penalty of two hundred pounds.

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

Time for commencing prosecution.

THE FIRST SCHEDULE.

(Section 5 (1).)

Hire-Purchase Act 1959.

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

*

The cash price of the goods is £.....

The terms charges are £.....

Other charges are—

For insurance for..... years £.....

For maintenance £.....

For freight £.....

For vehicle registration, &c. £..... £.....

The total amount you will have to pay (including deposit of £.....) is £.....

The difference between the cash price of the goods and the total amount you will have to pay is therefore £.....

Your instalments under the proposed agreement will be†.

* Insert short description of goods.

† Insert number, amount, and intervals of instalments.

THE SECOND SCHEDULE.

(Section 8.)

Hire-Purchase Act 1959.

ADVICE TO HIRERS.

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

- (a) you are entitled to a copy of the agreement and a statement of the amount that you owe if you make a written request to the owner for them, and your request is accompanied by a fee of one shilling. You may not request a copy or a statement more than once in three months;
- (b) with the written consent of the owner you can assign your rights under the hire-purchase agreement and he may not unreasonably refuse his consent. For details of the procedure of assignment see *Hire-Purchase Act 1959*, section 13;
- (c) you have the right to complete the agreement at any time and if you do you will be entitled to a rebate of some of the charges payable under the agreement. For details see *Hire-Purchase Act 1959*, section 15;
- (d) if you are unable to pay your instalments you are entitled to return the goods to the owner at your own expense, but if you do you will be liable to pay an amount sufficient to cover the loss suffered by the owner. For details of the amount that you will have to pay see the *Hire-Purchase Act 1959*, section 16.

THE THIRD SCHEDULE.

(Section 17 (1).)

Hire-Purchase Act 1959.

NOTICE OF INTENTION TO RE-POSSESS.

TAKE NOTICE THAT.....
 the owner of *.....
 hired by you under an agreement dated the.....day
 of.....19..... intends to retake possession of the
 goods after the expiration of †..... days from the service of this
 notice unless the arrears of instalments which now amount to £.....
 are paid to.....at.....on or
 before.....19.....

Total amount payable	£.....
Amount paid or provided by hirer to...../.....19.....	£.....
Arrears under agreement to...../.....19.....	£.....

* Insert description of goods.

† Insert number of days, not being less than seven, or, where the
 hirer is a farmer and section 34 applies, not being less than
 thirty.

THE FOURTH SCHEDULE.

(Sections 15 (3), 17 (3).)

Hire-Purchase Act 1959.

ADVICE TO HIRERS.

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

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

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

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

OR

- (b) if, within twenty-one days, you give notice of your intention to
 finalize the agreement by paying the balance due under the
 agreement and costs of the re-possession:

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

Total amount payable under the agree- ment	£.....
Less deposit and instalments paid	£.....

Balance due under agreement	£.....
Less statutory rebates	£.....
Add costs of re-possession	£.....
Storage, repair, or maintenance	..	£.....
Total	£.....

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

The owner's estimate of the value of the goods re-possessioned is £ ..

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

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

* Strike out whichever inapplicable.

† Insert owner's estimate of value.

DO NOT DELAY.

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

If you think you have 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.

MEDICAL.

No. 80 of 1959.

AN ACT to consolidate and amend the law relating to medical practitioners.

[23 December 1959.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I.

PRELIMINARY.

Short title.

1 This Act may be cited as the *Medical Act* 1959.